



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## LOK SABHA

The following Bills were introduced in Lok Sabha on 18th July, 2018:—

### BILL NO.89 OF 2018

*A Bill to prevent trafficking of persons, especially women and children and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic and social environment for the victims and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2018.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification appoint; and different dates may be appointed for different States and any reference in any of the provisions to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

Short title,  
extent and  
commencement.

## Definitions.

2. (I) In this Act, unless the context otherwise requires,—

- (a) “Anti-Trafficking Police Officer” means a police officer referred to in section 9;
- (b) “Anti-Trafficking Unit” means a unit set up in the Districts by the appropriate Government under section 10;
- (c) “appropriate Government” means, in respect of matters relating to,—
  - (i) a Union territory without legislature, the Central Government;
  - (ii) the Union territories with legislature, the Government of the National Capital Territory of Delhi or, as the case may be, the Government of Union territory of Puducherry;
  - (iii) a State, the State Government;
- (d) “Bureau” means the National Anti-Trafficking Bureau established by the Central Government under sub-section (I) of section 3;
- (e) “child” means a person who has not completed the age of eighteen years;
- (f) “Child Welfare Committee” shall have the meaning assigned to it in section 27 of the Juvenile Justice (Care and Protection of Children) Act, 2015;
- (g) “Designated Court” means a court designated under section 46;
- (h) “District Anti-Trafficking Committee” means a committee constituted by the appropriate Government under section 13;
- (i) “District Police Nodal Officer” means a police officer referred to in section 8;
- (j) “Magistrate” means a District Magistrate or Additional District Magistrate or a Sub-Divisional Magistrate;
- (k) “narcotic drugs” and “psychotropic substances” shall have the meanings, respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (l) “National Anti-Trafficking Relief and Rehabilitation Committee” means a committee established by the Central Government under sub-section (I) of section 11;
- (m) “notification” means a notification published in the Official Gazette and the term notify shall be construed accordingly;
- (n) “premises” means any building, conveyance, land, location, place, structure or any part thereof and includes any source, transit or destination of trafficking;
- (o) “prescribed” means prescribed by rules made by the appropriate Government under this Act;
- (p) “Protection Home” means the Protection Home referred to in sub-section (I) of section 21;
- (q) “rehabilitation” means all measures and processes of physical, psychological and social well-being of a person who is trafficked and includes access to education, skill development, healthcare including psychological and physiological support, medical services, economic empowerment, legal aid and assistance, safe and secure accommodation;
- (r) “Rehabilitation Fund” means the fund constituted under sub-section (I) of section 30;
- (s) “Rehabilitation Home” means the Rehabilitation Home referred to in sub-section (I) of section 22;

2 of 2016.

61 of 1985.

(t) “State Nodal Officer” means an officer appointed by the State Government under sub-section (I) of section 6;

(u) “State Anti-Trafficking Committee” means a Committee established by the appropriate Government under sub-section (I) of section 12;

(v) “State Police Nodal Officer” means a police officer appointed by the State Government under sub-section (I) of section 7;

45 of 1860.

(w) “trafficking of person” shall have the meaning assigned to it in sub-section (I) of section 370 of the Indian Penal Code;

(x) “victim” means any person on whom an offence of trafficking has been committed or attempted by any other person or persons:

Provided that for the purpose of receiving compensation or relief under this Act, any dependent or legal heir, as the case may be, of a deceased victim, shall also be construed as a victim.

45 of 1860.  
2 of 1974.  
21 of 2000.  
2 of 2016.

(2) The words and expressions used but not defined in this Act but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Information Technology Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 shall have the meanings respectively assigned to them in those Acts.

## CHAPTER II

### NATIONAL ANTI-TRAFFICKING BUREAU

3. (1) The Central Government shall, by notification, establish a Bureau to be called the National Anti-Trafficking Bureau for exercising the powers and discharging its functions under this Act.

National  
Anti-  
Trafficking  
Bureau.

(2) The Bureau shall have police officers and other officers of such appropriate ranks, as may be necessary, for the discharge of its functions.

(3) The manner of selection, deputation, functioning and reporting of the officers and employees of the Bureau shall be such, as may be prescribed.

4. The Bureau shall perform the following functions in relation to trafficking of persons, namely: —

Functions of  
Bureau.

(i) co-ordinate and monitor surveillance and preventive efforts along with the known or probable routes;

(ii) facilitate surveillance, enforcement and preventive steps at source, transit and destination points;

(iii) maintain co-ordination between various law enforcement agencies and non-Governmental organisations and other stakeholders;

(iv) strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence;

(v) increase international co-operation and co-ordination with concerned authorities in foreign countries and international organisations, in operational and long-term intelligence in investigation, mutual legal assistance, to facilitate universal action for prevention and suppression and to implement any obligation under the various international conventions and protocols that are in force in respect of counter measures;

(vi) co-ordinate actions and enforcement by various bodies or authorities established under this Act;

(vii) co-ordinate actions taken by the concerned Ministries, Departments, organisations of the Government, especially linking the source of transit to destination and connecting all stakeholders;

(viii) review measures for combating, preventing and formulating co-ordinated strategy of action by various law enforcement agencies;

(ix) make sustained efforts for capacity building and training of agencies;

(x) bring out resource material including education curriculum for children, Panchayat Raj institutions, enforcement agencies, judicial officers and other stakeholders;

(xi) co-ordinate investigating activities among the Districts, States and with other countries in case of cross-border trafficking of persons;

(xii) co-ordinate the investigation, where international ramifications are reported or suspected;

(xiii) co-ordinate investigation, where inter-State ramifications are reported or suspected across two or more States or Union territory Administrations;

(xiv) undertake and facilitate other investigators for investigating offences from the organised crime perspective;

(xv) develop and monitor a database on every crime under this Act;

(xvi) co-ordinate with any national or international investigating or law enforcement agencies and civil society organisations;

(xvii) facilitate inter-State and international transfer of evidence in investigation as well as video conferencing in judicial proceedings;

(xviii) facilitate frequent meetings of the State Police Nodal Officers to facilitate, monitor and evaluate the establishment and functioning of Anti-Trafficking Units;

(xix) provide necessary support for investigation by the Anti-Trafficking Units, where such requests are made;

(xx) undertake steps to enhance the professional skills of Anti-Trafficking Police Officers, Anti-Trafficking Units and all concerned with the investigation and prosecution of cases;

(xxi) facilitate inter-State and trans-border transfer of evidence and materials, witnesses and others for expediting prosecution;

(xxii) protection of witnesses, where referred by any State Government, victims, complainants and affected families, as the case may be;

(xxiii) undertake steps for timely and effective action on post-rescue care and protection of any person who is trafficked, including steps towards rehabilitation by the concerned agencies, so that their rights are ensured, and that they are not re-trafficked;

(xxiv) monitor and facilitate victim and witness protection protocols, rules and procedures including video conferencing during trial of offences which have ramifications across States and beyond borders; and

(xxv) develop minimum standards of care and advice for all concerned, in matters of compliance.

Investigation  
by Bureau.

5. (1) The Bureau may take over investigation of any offence under this Act, where referred to it by two or more States.

(2) Where an offence is referred to the Bureau under sub-section (1), the State Government shall not proceed with the investigation of the offence and shall forthwith transmit the relevant documents and records to the Bureau.

(3) For the removal of doubts, it is hereby declared that till the Bureau takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation of an offence under this Act.

(4) While investigating any offence under this Act, the Bureau, having regard to the gravity of the offence and other relevant factors, may—

(a) if it is expedient to do so, request the State Government to associate with the investigation; or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

(5) While investigating any offence under this Act, the Bureau may also investigate any other offence under any law for the time being in force, which the accused is alleged to have committed, if the offence is connected with such other offence.

(6) The State Government shall extend assistance and co-operation to the Bureau for investigation of an offence under this Act.

(7) Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any offence under this Act or other offences under any other law for the time being in force.

### CHAPTER III

#### STATE ANTI-TRAFFICKING OFFICERS

**6.** (1) The State Government shall appoint a State Nodal Officer, not below the rank of Director in the State Government.

State Nodal  
Officer.

(2) The State Nodal Officer shall be responsible for follow up action under this Act, as per the directions of the State Anti-Trafficking Committee and co-ordinate with other Government agencies and civil society organisations.

(3) The State Nodal Officer shall provide relief and rehabilitation services through District Anti-Trafficking Unit and other Government agencies as well as civil society organisations.

(4) The State Nodal Officer shall liaison with the State Police Nodal Officer and the National Anti-Trafficking Relief and Rehabilitation Committee, for all matters relating to relief and rehabilitation.

**7.** (1) The State Government shall appoint a State Police Nodal Officer of such rank as may be specified by that Government.

State Police  
Nodal  
Officer.

(2) The State Police Nodal Officer shall be responsible for all the activities in the prevention and combating of trafficking of persons in the State and shall also monitor the functioning of Anti-Trafficking Police Officers and Anti-Trafficking Units in the State.

(3) The State Police Nodal Officer shall also co-ordinate and monitor inter-State and trans-border transfer of persons rescued, witnesses, evidence and offenders under this Act.

(4) The State Police Nodal Officer shall liaison with State Nodal Officer and shall perform such other functions as may be prescribed.

**8.** (1) The State Government shall designate one police officer not below the rank of Superintendent of Police of the District to be the District Police Nodal Officer on matters relating to trafficking of persons and responsible for all the activities in the District concerned and perform such other functions as may be prescribed.

District Police  
Nodal Officer.

(2) The District Police Nodal Officer shall be the convener of the District Anti-Trafficking Committee and shall report to the State Police Nodal Officer in every matter relating to an offence of trafficking of persons including rescue, investigation and inter-State transfer of a person who is trafficked and the offenders.

(3) The District Police Nodal Officer shall monitor the functioning of Anti-Trafficking Unit and provide necessary assistance to them for the effective discharge of their duties.

Anti-Trafficking Police Officers.

**9.** (1) The State Government shall designate for each District such number of Anti-Trafficking Police Officers for matters related to trafficking of persons, including prevention of trafficking, rescue and protection of the victims, investigation and prosecution.

(2) In the case of inter-district or inter-State trafficking of persons, the Anti-Trafficking Police Officers shall investigate an offence under this Act, in Consultation with their counterparts in any other State or local police, as the case may be, with the prior approval of the concerned State Police Nodal Officer.

Anti-Trafficking Unit.

**10.** (1) The appropriate Government shall set up for each District or a group of Districts, such number of Anti-Trafficking Units, for dealing with all matters of prevention, rescue, protection and care of victims and witnesses and of investigation and prosecution of any offence under this Act.

(2) Every local police station shall, where Anti-Trafficking Unit is not functional, undertake every activity in matters of rescue, investigation, prevention and protection of persons trafficked under this Act.

(3) The State Government shall appoint for every Anti-Trafficking Unit such number of subordinate police officers including women police officers as it deems necessary for the discharge of the functions of the Anti-Trafficking Unit and vest in them with all the powers to investigate any offence committed within its local jurisdiction under this Act:

Provided that the officer-in-charge of a police station after registering the First Information Report under section 154 of the Code of Criminal Procedure, 1973, shall take all necessary steps for immediate rescue and protection and then transfer the case to the Anti-Trafficking Unit.

2 of 1974.

#### CHAPTER IV

##### RELIEF AND REHABILITATION AUTHORITIES

National Anti-Trafficking Relief and Rehabilitation Committee.

**11.** (1) The Central Government shall establish a National Anti-Trafficking Relief and Rehabilitation Committee, by notification for providing relief and rehabilitation services to the victims.

(2) The composition of the National Anti-Trafficking Relief and Rehabilitation Committee shall be as follows, namely:—

(i) Secretary, Ministry of Women and Child Development—Chairperson;

(ii) Representative, Ministry of Home Affairs—Member;

(iii) Representative, Ministry of External Affairs—Member;

(iv) Representative, Ministry of Labour and Employment—Member;

(v) Representative, Ministry of Social Justice and Empowerment—Member;

(vi) Representative, Ministry of Panchayat Raj—Member;

(vii) Representative, Ministry of Health and Family Welfare—Member;

(viii) Representative, Legislative Department—Member;

(ix) Four representatives from registered civil society organisations active in the prevention, rescue and rehabilitation of victims—Members;

(x) such other representatives of the Ministries or Departments or experts representing different States, as may be prescribed—Members; and

(xi) Head, National Anti-Trafficking Bureau—Member-Secretary.

(3) The National Anti-Trafficking Relief and Rehabilitation Committee shall perform the following functions, namely:—

(i) facilitate and ensure rehabilitation and relief services including compensation, repatriation, re-integration to the victims through concerned Ministries, Departments and statutory bodies;

(ii) provide for Protection Homes and Rehabilitation Homes to enable the immediate and long-term sustainable rehabilitation of victims;

(iii) ensure the effective co-ordination between the concerned authorities both within the country as well as with other countries for the repatriation of victims;

(iv) seek reports from appropriate Government, State Anti-Trafficking Committee, District Anti-Trafficking Committee, on the quality of services and the functioning of the Protection Homes and Rehabilitation Homes;

(v) maintain and monitor the Rehabilitation Fund Constituted under section 30; and

(vi) perform such other functions as may be prescribed.

12. (1) The appropriate Government shall establish a State Anti-Trafficking Committee to oversee the implementation of this Act and advise the State Government and District Anti-Trafficking Committees on matters relating to prevention of trafficking, protection, repatriation and rehabilitation of victims.

State Anti-Trafficking Committee.

(2) The State Anti-Trafficking Committee shall consist of the following, namely:—

- (i) Chief Secretary—Chairperson;
- (ii) Director General of Police—Member;
- (iii) Secretary, Department of Women and Child—Member;
- (iv) Secretary, Home Department—Member;
- (v) Secretary, Labour Department—Member;
- (vi) Secretary, Health Department—Member;
- (vii) Secretary, State Legal Services Authority—Member;
- (viii) Secretary, Law Department—Member;
- (ix) Protector of Emigrants, Ministry of External Affairs—Member;
- (x) State Police Nodal Officer—Member;
- (xi) Two social workers out of which one shall be a woman—Member;
- (xii) such other persons as may be prescribed—Members; and
- (xiii) State Nodal Officer—Member-Secretary.

(3) The State Anti-Trafficking Committee shall perform the following functions, namely:—

(i) identify the roles and responsibilities of each Department at State or District level for effective implementation of the Act and the rules made thereunder;

(ii) arrange for appropriate training and sensitisation of functionaries of all personnel including Governmental and non-Governmental;

(iii) develop effective networking and linkages with local non-Governmental organisations for specialised services and technical assistance like vocational training, education, healthcare, nutrition, mental health intervention, drug de-addiction and legal aid services;

(iv) review and monitor the functioning of the District Anti-Trafficking Committee;

(v) make necessary funds available to the District Anti-Trafficking Committee for providing or setting up of required facilities for the implementation of the Act; and

(vi) perform such other functions and duties as may be prescribed.



(4) The State Anti-Trafficking Committee shall co-ordinate with Bureau and National Anti-Trafficking Relief and Rehabilitation Committee to provide all necessary assistance and inputs as may be required to prevent offences of trafficking of persons especially, those that have inter-State and international ramifications and have features of an organised crime.

District Anti-Trafficking Committee.

**13.** (1) The appropriate Government shall, by notification, constitute for every District, a District Anti-Trafficking Committee for exercising the powers and performing such functions and duties in relation to prevention, rescue, protection, medical care, psychological assistance and need-based rehabilitation of victims.

(2) The District Anti-Trafficking Committee shall consist of the following, namely:—

- (i) District Magistrate or Additional District Magistrate—Chairperson;
- (ii) District Officer for Women and Child Development—Member;
- (iii) Representative, District Legal Services Authority—Member;
- (iv) Representative, Child Welfare Committee—Member;
- (v) Two Civil Society Organisations or Non-Governmental Organisations working in the field of prevention of trafficking and related issues—Members;
- (vi) such other persons as may be prescribed—Members; and
- (vii) District Police Nodal Officer—Member-Secretary.

(3) The District Anti-Trafficking Committee shall perform the following functions, namely:—

- (i) direct and facilitate the person in-charge of the Protection Home or Rehabilitation Home, as the case may be, to submit an individual care plan to it;
- (ii) ensure care, protection, appropriate rehabilitation or restoration of all victims, based on each victims' individual care plan by passing necessary directions to Protection Homes and Rehabilitation Homes;
- (iii) co-ordinate with other State Departments and Panchayat Raj institutions, to keep a check on the children who drop out from schools and those children who are covered by various schemes and have stopped accessing the benefits of those schemes and inform such cases to the State Anti-Trafficking Committee and take appropriate actions;
- (iv) facilitate in a time bound manner or in the manner as may be prescribed, the inter-State repatriation of victims or persons subjected to bonded labour;
- (v) facilitate survey of the areas and vulnerable population to identify source, transit and destination areas of trafficking of persons and based on the information received, draw up an action plan for the prevention and protection of people who are vulnerable to trafficking and implementation of the action plan;
- (vi) create programmes for awareness generation, community mobilisation and empowerment of vulnerable social groups against trafficking of persons;
- (vii) assist the Anti-Trafficking Police Officer, the Anti-Trafficking Unit or the local police, as the case may be, in conducting rescue operation, transferring victims to the nearest Protection Home, in connection with prevention of trafficking of persons, protection of victims and their rehabilitation, etc.; and
- (viii) such other functions as may be prescribed.

(4) The appropriate Government shall provide adequate resources to the District Anti-Trafficking Committee for carrying out prevention, protection and rescue procedures.



(5) The District Anti-Trafficking Committee shall furnish a report to the State Anti-Trafficking Committee on quarterly basis.

**14.** The District Anti-Trafficking Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the victims under this Act and in case of child victim, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.

Powers of District Anti-Trafficking Committee.

2 of 2016.

## CHAPTER V

### SEARCH, RESCUE AND POST-RESCUE ACTIVITIES

**15.** The provisions of the Code of Criminal Procedure, 1973 shall *mutatis mutandis* apply in relation to a search and seizure in respect of an offence under this Act.

Search and seizure.

2 of 1974.

**16.** (1) Where a police officer or Anti-Trafficking Police Officer or Anti-Trafficking Unit has reason to believe that it is necessary to rescue a person without undue delay due to the imminent danger that may cause to his life and person, he or it may remove such person from any place or premises and produce him before the Magistrate or Child Welfare Committee, as the case may be, and shall take all necessary steps for the medical examination of such person for the purposes of determination as to the age, the assessment or detection of trauma, injury or illnesses incidental thereto.

Rescue and medical examination of persons.

2 of 1974.  
32 of 2012.

(2) The provisions of section 164A of the Code of Criminal Procedure, 1973 and section 27 of the Protection of Children from Sexual Offences Act, 2012 shall *mutatis mutandis* apply in relation to a medical examination of any person under this section.

(3) The Anti-Trafficking Police Officer or Anti-Trafficking Unit or the Police Officer, as the case may be, shall inform the District Anti-Trafficking Committee about the rescue conducted under this section and the said Committee shall take appropriate actions for providing interim relief and further rehabilitation services to the person rescued.

**17.** (1) The District Anti-Trafficking Committee shall assist the Anti-Trafficking Police Officer or the Anti-Trafficking Unit or any police officer, as the case may be, in rescue operation and transferring any person to the nearest Protection Home or any other suitable institution, as deemed fit.

Safety, care and protection of person rescued.

(2) The Anti-Trafficking Police Officer or Anti-Trafficking Unit or any police officer, as the case may be, shall produce the person rescued before the Magistrate or the Child Welfare Committee, as the case may be, without any delay but within twenty-four hours of the rescue.

(3) The Magistrate may, after making an inquiry as to the age of the person rescued and if it is found that the person is a child, pass such orders as he deems necessary for the care and protection of the person.

(4) Where the Magistrate is satisfied, after making an inquiry as to the age of the victim and it is found that the victim is not a child, the Magistrate may, make an order that the victim be placed, for such reasonable period, in a Rehabilitation Home:

Provided that, if the victim or any person rescued is not a child and he voluntarily makes an application supported by an affidavit for his release and if the Magistrate is of the opinion that such application has not been made voluntarily, the Magistrate may reject such application after recording his reasons in writing.

(5) In discharging the functions under this section, a Magistrate may summon a mental healthcare professional, or psycho social counsellor, or clinical psychologist, or psychotherapist, as the case may be, to assist him and may, for this purpose, in consultation with the District Anti-Trafficking Committee and District Legal Services Authority, maintain a list of experienced social workers.

Investigation  
and evidence.

**18.** (1) The Anti-Trafficking Police Officer or Anti-Trafficking Unit or any police officer, as the case may be, shall ensure that investigation including search and seizure must be conducted in accordance with the provisions of the Code of Criminal Procedure, 1973, and any other law for the time being in force.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Anti-Trafficking Police Officer or the officer-in-charge of the police station, as the case may be, shall forward the report on completion of investigation to the court having jurisdiction within ninety days from the date of registration of first information report.

2 of 1974.

(3) The investigating officer, while forwarding the report on completion of investigation of an offence under this Act, punishable with imprisonment of more than two years, has reason to believe that any amount suspected to have been obtained by the accused by way of commission of the offence and held by him in any bank account, the investigating officer may submit an application before the designated court for freezing of such amount.

(4) The designated court, on satisfaction, after an inquiry made in this behalf, may freeze such amount in any such bank account and may, upon conviction, order that such amount lying in such bank account, shall be remitted to the Rehabilitation Fund.

Presumption  
as to  
offences.

**19.** Where a person is prosecuted for committing or abetting or attempting to commit any offence under this Act in respect of a child or a woman or a person suffering from physical or mental disability, unless it is specified, the designated court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

## CHAPTER VI

### PREVENTIVE MEASURES

Preventive  
measures by  
State and  
District Anti-  
Trafficking  
Committees.

**20.** (1) The State and the District Anti-Trafficking Committees shall undertake all measures and recommend strategies and plans to protect and prevent vulnerable persons from being trafficked.

(2) The measures referred to in sub-section (1) shall include—

(i) co-ordinating the implementation of all the programmes, schemes and plans relating to the prevention of trafficking of persons with any statutory bodies, organisations or agencies including the Panchayat Raj Institutions;

(ii) facilitating the implementation of livelihood and educational programmes for vulnerable communities;

(iii) facilitating the implementation of programmes and schemes sponsored by various Ministries and Departments of the appropriate Government;

(iv) co-ordinating with corporate sector to implement various schemes, programmes for the prevention of trafficking of persons;

(v) ensuring accountability of the concerned agencies, by regular review and appropriate action;

(vi) developing appropriate law and order framework to ensure prevention of trafficking of persons;

(vii) undertaking vulnerability mapping of the State and give focus and attention to the challenging areas;

(viii) commissioning independent research on various aspects of trafficking and ensure follow up action;

(ix) organising interface between law enforcement agencies, other Government Departments and agencies with the voluntary organisations or non-Governmental organisations in matters of prevention of trafficking of persons;

(x) preparing an annual report on trafficking of persons in the State;

(xi) co-ordinating with the Bureau and other State Anti-Trafficking Committees, especially with those States where source-transit-destination linkages exist, and undertake all activities for joint action programmes by bringing in common policies and programmes;

(xii) linking with the Bureau and the Central Government and other concerned agencies, in case of trans-border trafficking of persons and ensure appropriate action.

## CHAPTER VII

### PROTECTION AND REHABILITATION OF VICTIMS

**21.** (1) The appropriate Government shall maintain either directly or through voluntary organisations or non-Governmental organisations as many Protection Homes as necessary and to be managed in the manner, as may be prescribed for the immediate care and protection of the victims or any person rescued.

Protection  
Homes.

(2) The Protection Homes shall provide for shelter, food, clothing, counselling and medical care that is necessary for the victims or any person rescued and such other services in the manner, as may be prescribed.

**22.** (1) The appropriate Government, as it deems fit, shall maintain either directly or through voluntary organisations or non-Governmental organisations, one or more Rehabilitation Homes in each District managed in the manner as may be prescribed for the purpose of providing long-term rehabilitation of victims or any person rescued.

Rehabilitation  
Homes.

(2) The appropriate Government may also utilise any existing shelter home for the purposes of rehabilitation under sub-section (1).

**23.** (1) Notwithstanding anything contained in any other law for the time being in force, a Protection Home and Rehabilitation Home shall be registered under this Act in such manner as may be prescribed by the appropriate Government.

Registration.

(2) If any person in-charge of Protection Home and Rehabilitation Home providing shelter and rehabilitation to victims or any person rescued contravenes any of the provisions of sub-section (1), he shall be punished with imprisonment which may extend to one year or with fine which shall not be less than one lakh rupees, or with both.

**24.** (1) A victim or any person rescued on behalf of him may make an application to the Magistrate within the local limits of whose jurisdiction the victim or such other person is trafficked or suspected to be trafficked for an order that he may be kept in a Rehabilitation Home:

Application  
for providing  
care and  
protection.

Provided that in case the victim or any person rescued is a child, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.

2 of 2016.

(2) The Magistrate may, pending inquiry under sub-section (3) or sub-section (4) of section 17, having regard to the circumstances of the case, direct that the victim or any person rescued to be kept in such care and protection as he may consider proper.

(3) The Magistrate shall consult the District Anti-Trafficking Committee before taking a final decision with respect to the rehabilitation of the victim or such other person.

**25.** Where the person rescued is a victim, the District Anti-Trafficking Committee shall ensure that the rehabilitation of the person is not contingent upon criminal proceedings being initiated against the accused or the outcome thereof.

Rehabilitation  
not to be  
contingent  
on criminal  
proceedings.

## CHAPTER VIII

### REPATRIATION

**26.** (1) The District Anti-Trafficking Committee or the Child Welfare Committee, as the case may be, shall be responsible for the repatriation of victims by co-ordinating with their counterparts in any other District.

Repatriation  
of victims.

(2) Where the State Anti-Trafficking Committee is of the opinion that a victim from a foreign country needs to be repatriated to the country of origin, it may deal with the matter under any law for the time being in force.

(3) The State Nodal Officer shall obtain informed written consent from the victim for repatriation purposes, and where needed, shall make arrangements for the counselling of the victim by trained psycho-social professionals.

(4) The repatriation of the victims shall be completed within three months for inter-State repatriation, and within six months in case of cross-border repatriation, from the date of rescue by the District Anti-Trafficking Committee, or the Child Welfare Committee, or State Police Nodal Officer, as the case may be:

Provided that any delay in repatriation shall be recorded for reasons in writing and shall be reported to the National Anti-Trafficking Relief and Rehabilitation Committee and the Bureau forthwith.

## CHAPTER IX

### MONETARY RELIEF AND COMPENSATION

Interim relief. **27.** (1) Upon application for interim relief by the victim, the District Anti-Trafficking Committee or Child Welfare Committee, as the case may be, shall take immediate steps to award interim relief to the victim as deemed appropriate not later than thirty days, taking into consideration all aspects, including physical, mental trauma and the other requirements of the victim.

(2) The appropriate Government shall provide adequate funds at the disposal of the District Anti-Trafficking Committee for the purposes under sub-section (1), within a period of one month from the date of commencement of this Act.

Relief. **28.** (1) The District Anti-Trafficking Committee shall take steps to ensure that appropriate relief is provided to the victim, within sixty days from the date of filing of charge-sheet.

(2) The relief amount shall be in addition to any other compensation including any amount or benefit payable by way of any scheme of the appropriate Government or pursuant to any order of the court under any law for the time being in force.

## CHAPTER X

### FORFEITURE AND ATTACHMENT OF PROPERTY

Forfeiture and attachment of property. **29.** (1) Where any property is, or is likely to be, used for the commission of an offence under this Act and the property is concealed, transferred or dealt with, in any manner which may result in frustrating any proceedings under this Act, the designated court may attach such property:

Provided that the designated court shall give an opportunity to be heard to the person who is the owner or occupier of the property.

(2) Where a person has been convicted of any offence under this Act, the designated court shall, in addition to awarding any punishment, declare that any property, movable or immovable or both, belonging to such person or held by any person on his behalf, which has been used for the commission of that offence or accrued thereby, or which has been attached under sub-section (1), shall stand forfeited to the appropriate Government and the same may be authorised for the purpose of realisation of any fine imposed by the designated court and the proceeds shall be remitted to the Rehabilitation Fund.

## CHAPTER XI

## REHABILITATION FUND

30. (1) There shall be constituted a fund by the Central Government to be called the Rehabilitation Fund for the welfare and rehabilitation of the victims under this Act and there shall be credited thereto :—

Rehabilitation  
Fund.

(a) any grants and loans made by the appropriate Government;

(b) any voluntary donations, contributions or subscriptions, whether or not for any specific purpose as may be decided upon by the Central Government;

(c) any fine recovered for the commission of an offence under this Act which may include recovery of fine specified in section 421 of the Code of Criminal Procedure, 1973;

(d) the amount seized from any bank account frozen under sub-section (4) of section 18; and

(e) any other sums as may be received.

(2) The State Government may supplement the Rehabilitation Fund.

(3) The Rehabilitation Fund shall be utilised under this Act by the appropriate Government for :—

(i) the establishment and administration of Protection Homes and Rehabilitation Homes;

(ii) supporting innovative programmes for the welfare and rehabilitation of the victims;

(iii) strengthening legal assistance and support;

(iv) providing entrepreneurial support, skill development training or vocational training;

(v) providing aftercare facilities for capital and infrastructure to the victims who are ready to integrate into mainstream society by setting up small business or profession;

(vi) providing victim and witness protection;

(vii) awareness generation programmes for the prevention of trafficking of persons;

(viii) creating community-based programmes to identify, report and prevent trafficking of persons;

(ix) providing specialised professional services, counsellors, translators, interpreters, social workers, mental health-care professionals, vocational trainers or such other specialised professionals for the victims; and

(x) any other activity which may be required for effective implementation of this Act.

(4) The Rehabilitation Fund shall be maintained and monitored by the National Anti-Trafficking Relief and Rehabilitation Committee.

(5) The Rehabilitation Fund shall be made available to the State and District Anti-Trafficking Committees towards prevention, protection and prosecution of matters relating to trafficking of persons.

(6) Any fine recovered for the commission of an offence under this Act shall also be remitted to the Rehabilitation Fund which includes recovery of fine specified in section 421 of the Code of Criminal Procedure, 1973.

(7) The generation, dissemination and utilisation of Fund shall be regulated in the manner as may be prescribed by the Central Government.

## CHAPTER XII

## OFFENCES AND PENALTIES

Aggravated  
form of  
trafficking of  
persons.

**31.** Notwithstanding anything contained in any other law for the time being in force, whoever commits an offence of trafficking of person :—

(i) for the purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion or by subtle means including, allegations of accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities; or

(ii) for the purpose of bearing child, either naturally or through assisted reproductive techniques; or

(iii) by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing him to remain in exploitative condition; or

(iv) by administering any chemical substance or hormones on a person for the purpose of early sexual maturity; or

(v) for the purpose of marriage or under the pretext of marriage trafficks a woman or child after marriage; or

(vi) by causing serious injury resulting in grievous hurt or death of any person, including death as a result of suicide as a consequence of trafficking of person; or

(vii) who is a pregnant woman or the offence results in pregnancy of the person; or

(viii) by causing or exposing the person to a life-threatening illness including acquired immuno deficiency syndrome or human immuno deficiency virus; or

(ix) for the purpose of begging; or

(x) who is a mentally ill person as defined in clause (l) of section 2 of the Mental Health Act, 1987 or a person with disability as defined in clause (s) of section 2 of the Rights of Persons with Disabilities Act, 2016, or as a consequence of trafficking, the person becomes mentally ill or disabled; or

14 of 1987.  
49 of 2016.

(xi) by encouraging or abetting any person to migrate illegally into India or Indians in to some other country,

is said to commit an offence of aggravated form of trafficking of the person.

Punishment  
for  
aggravated  
form of  
trafficking of  
persons.

**32.** Whoever commits the offence of aggravated form of trafficking of a person shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than one lakh rupees.

Trafficking  
of persons on  
more than  
one occasion.

**33.** Whoever is convicted of the offence of trafficking on more than one occasion shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine which shall not be less than two lakh rupees.

Punishment  
for keeping  
or allowing  
premises to  
be used as  
place for  
trafficking of  
persons.

**34. (1)** Whoever keeps or manages, or acts or assists in the keeping or management of a premises to be used as a place for trafficking of any person shall be punished with rigorous imprisonment for a term which may extend to five years and also with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term which shall not be less than seven years and with fine which may extend to two lakh rupees.

(2) Whoever :—

(i) being a tenant, lessee, occupier or person in-charge of any premises, uses, or knowingly allows any other person to use, the premises or any part thereof as a place for trafficking of persons; or



(ii) being the owner, lessor or landlord of any premises, or the agent of such owner, lessor, or landlord, lets out the same, or any part thereof with the knowledge that the same or any part thereof is intended to be used as a place of exploitation of the victim, or is wilfully a party to the use of the premises or any part thereof as a place for trafficking of persons,

shall be punished on first conviction with imprisonment for a term which may extend to three years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and with fine which may extend to two lakh rupees.

*Explanation.*—For the purposes of sub-section (2), it shall be presumed until the contrary is proved that any person referred to in clause (i) or clause (ii) of that sub-section has not exercised due diligence in allowing to use or letting out the premises or in allowing the premises or any part thereof to be used as a place of exploitation or, as the case may be, and has knowledge that the premises or any part thereof was being used as a place of exploitation of the victim.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (i) or clause (ii) of sub-section (2) of any offence under this Act in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void with effect from the date of the said conviction.

**35.** (1) Notwithstanding anything contained in any other law for the time being in force, the Magistrate shall, on receipt of information from the police or otherwise, that any premises or any part thereof is being used for the purpose of trafficking of persons, issue notice to the owner, lessor or landlord of the premises or part thereof, or the agent of the owner, lessor or landlord, or on the tenant, lessee, occupier of, or any other person in-charge of such premises or part thereof, to show cause within seven days of the receipt of the notice why the same should not be sealed or attached for improper use thereof; and, after hearing the person concerned, if the Magistrate is satisfied that the premises or part thereof is being used for trafficking of persons, then, the Magistrate may pass an order :—

Closure of premises and eviction of offenders from premises.

(i) directing eviction of the occupier or any person from the premises, within seven days of the passing of the order;

(ii) directing that the owner, lessor, or landlord, or the agent of the owner, before letting out the premises or any part thereof, which, during the rescue or search has been found to be used for the purpose of trafficking, shall obtain the previous permission of the Magistrate and the Magistrate shall pass appropriate orders within thirty days from the date of order and where no permission is granted within such period, the permission shall be deemed to have been granted.

(2) If the Magistrate, after the notice issued under sub-section (1), finds that the premises or any part thereof was used for trafficking of any person, the owner, lessor, landlord the agent of the owner, lessor, landlord exercised due diligence in letting out premises or any part thereof, then, the same shall be restored to the owner, lessor or landlord, or the agent of the owner or lessor or landlord as the case may be, with an undertaking that the premises or any part thereof shall not be leased out, or otherwise given possession of, or for the benefit of the person who was allowing the improper use therein, within two months from the date of issuing the notice by the Magistrate.

(3) If the Magistrate is satisfied that the premises or part thereof was not used for trafficking of any person, he shall cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor, landlord, tenant, lessee, occupier or any other person in-charge of the premises or part thereof within two months of the issuance of the notice.

(4) When an owner, lessor or landlord, or the agent of the owner, lessor or landlord fails to comply with a direction given under clause (ii) of sub-section (1), he shall be punished with fine which may extend to one lakh rupees.



Punishment  
for promoting  
or facilitating  
trafficking of  
person.

**36.** (1) A person is said to promote, procure or facilitate the commission of trafficking of person, if that person :—

(i) produces, prints, issues or distributes unissued, tampered or fake certificates, registration or stickers as proof of compliance with Government requirements; or

(ii) advertises, publishes, prints, broadcasts or distributes, or causes the advertisement, publication, printing or broadcast or distribution by any means, including the use of information technology or any brochure, flyer or any propaganda material that promotes trafficking of person or exploitation of a trafficked person in any manner; or

(iii) assists in the conduct of misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of clearances and necessary documents from Government agencies for the purpose of trafficking of any person.

(2) Whoever commits an offence under sub-section (1) shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which shall not be less than one lakh rupees.

Punishment  
for abetment.

**37.** Whoever abets any person to commit any offence under this Act and if the act abetted is in consequence of the abetment, shall be punished with the punishment provided for that offence under this Act.

Punishment  
for omission  
of duty.

**38.** Notwithstanding anything contained in any other law for the time being in force, whoever knowingly or having reason to believe that a person has been trafficked, fails to perform a duty, which he is entrusted under this Act for providing care, protection and rehabilitation to a victim or performs duty but knowingly causes physical or mental injury or hardship or trauma to the victim shall be punished with fine which shall not be less than fifty thousand rupees and in the event of a second or subsequent offence with rigorous imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees.

Buying or  
selling of any  
person.

**39.** (1) Whoever buys or sells any person for a consideration, shall be punished with rigorous imprisonment for a term which shall not be less than seven years but may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees.

(2) Whoever solicits or publicises electronically, taking or distributing obscene photographs or videos or providing materials or soliciting or guiding tourists or using agents or any other form which may lead to the trafficking of a person shall be punished with rigorous imprisonment for a term which shall not be less than five years but may extend to ten years, and shall also be liable to fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.

Hiring or  
obtaining  
possession,  
etc., for  
trafficking of  
person.

**40.** Whoever hires or otherwise obtains possession, or lets to hire, or in any manner disposes of a person, for the purpose of trafficking of person, shall be punished with imprisonment of either description for a term which shall not be less than three years but may extend to five years and shall also be liable to fine which shall not be less than one lakh rupees.

Offences  
related to  
media.

**41.** (1) Whoever commits trafficking of a person with the aid of media, including, but not limited to print, internet, digital or electronic media, shall be punished with rigorous imprisonment for a term which shall not be less than seven years but may extend to ten years and shall also be liable to fine which shall not be less than one lakh rupees.

(2) Whoever distributes, or sells or stores, in any form in any electronic or printed form showing incidence of sexual exploitation, sexual assault, or rape for the purpose of extortion or for coercion of the victim or his family members, or for unlawful gain shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to seven years and shall also be liable to fine which shall not be less than one lakh rupees.

**42.** (1) No report or newspaper or magazine or news-sheet or audio-visual media or any other form of communication regarding any inquiry or investigation or judicial proceedings at any stage shall disclose the name, address or any other particulars, which may lead to the identification of a victim or witness of trafficking of person under this Act shall be published:

Punishment for disclosure of identity.

Provided that for reasons to be recorded in writing, the designated court may permit such disclosure, if in its opinion, such disclosure is in the best interest of the victim.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both:

Provided that in case, the victim is a child, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.

2 of 2016.

**43.** (1) Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the person found guilty of such offence, shall be liable to punishment under such law which provides for punishment which is greater in degree.

Applicability of punishment.

(2) A designated court convicting a person of any offence under this Act may also pass an order for the auction of the premises or any part thereof and the proceeds of such auction shall be ordered to be remitted to the Rehabilitation Fund.

(3) When an occupier or any other person fails to comply with a direction given under clause (i) of sub-section (1) of section 35, he shall be deemed to have committed an offence under section 34 and shall be punished accordingly.

**44.** Whoever attempts to commit an offence punishable by this Act with imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Punishment for attempt to commit offence under this Act.

**45.** Nothing is an offence which is committed or attempted to have been committed by a victim, punishable with death or imprisonment for life or for imprisonment for ten years, if the offence is committed or attempted to have been committed, under coercion or compulsion or intimidation or threat or undue influence by any person and where, at the time of committing the offence, the victim is subjected to reasonable apprehension of his death, grievous hurt or any other injury to him or to any other person whom he is interested in.

Act committed by victim under coercion, compulsion, etc.

## CHAPTER XIII

### DESIGNATED COURTS

**46.** For the purposes of providing speedy trial of any offence under this Act, the State Government shall, in consultation with the Chief Justice of the High Court, by notification, within two months from the date of commencement of this Act, designate in each district, the Court of Session as a Designated Court.

Designated courts.

**47.** (1) The appropriate Government may, by notification, appoint Special Public Prosecutors for every designated court for conducting cases under this Act.

Special Public Prosecutors.

(2) Every person appointed as a Special Public Prosecutor under sub-section (1) shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provisions of that Code shall have effect accordingly.

2 of 1974.

(3) Subject to the provisions contained in section 301 of the Code of Criminal Procedure, 1973, the victim shall be entitled to the assistance of a legal counsel of his choice for any offence under this Act:

2 of 1974.

Provided that if the victim is unable to afford a legal counsel, the Legal Services Authority shall provide a counsel to him.

Period and manner for recording of evidence of person who is trafficked and disposal of cases.

**48.** (1) The designated court shall complete the trial, as far as possible, within a period of one year from the date of taking into cognizance of any offence under this Act.

(2) The designated court may record the statement of any victim through video conferencing in any case, where the victim is unable to appear before the court for the reasons of safety or confidentiality.

(3) In all matters of trans-border and inter-State crimes where the victim has been repatriated to any other State or country is unable to attend the court proceedings, the court may order video conferencing to record his statement.

(4) Notwithstanding anything contained in this Act, the inquiry and trial of offences under this Act, may be conducted *in camera*, if an application is made in this regard by the victim.

Payment to the victim.

**49.** (1) The designated court may order, where applicable, any backwages of the victim to be paid to him.

(2) The designated court shall on its own motion or on an application filed by or on behalf of the victim, award compensation under section 357A of the Code of Criminal Procedure, 1973, or under any other law for the time being in force or otherwise at any stage of the proceedings.

2 of 1974.

(3) The appropriate Government shall ensure that the relief ordered by the designated court is paid within sixty days from the date of receipt of the order.

Appeal.

**50.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of the designated court to the High Court.

2 of 1974.

(2) Every appeal under this section shall be preferred within a period of sixty days from the date of judgment, sentence or order appealed against:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

## CHAPTER XIV

### PROTECTION OF VICTIM, WITNESS AND COMPLAINANT

Protection of victim, witness and complainant.

**51.** (1) The designated court, if on an application made by a victim, witness or a complainant in any proceeding before it or by the Special Public Prosecutor in relation to such victim, witness or a complainant or on its own motion, is satisfied that the life of such victim, witness or a complainant is in danger, it may, for reasons to be recorded in writing, take such measures to protect such victim, witness and the complainant.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the measures which a designated court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the designated court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

## CHAPTER XV

## MISCELLANEOUS

**52.** (1) All offences under this Act shall be cognizable and non-bailable.

Cognizance of offences.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act with imprisonment of more than two years;

(b) no person accused of committing an offence under this Act shall be released on bail or on his own bond unless—

(i) the Special Public Prosecutor has been given an opportunity to oppose the application for such release;

(ii) where the Special Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail; and

(c) the victim shall have a right to be heard in all bail matters.

2 of 1974.

(3) The conditions for granting of bail specified in clause (b) of sub-section (2) shall be in addition to the conditions provided under the Code of Criminal Procedure, 1973.

**53.** No suit, prosecution, or other legal proceeding shall lie against the Central Government or the State Government or any person acting under the directions of the Central Government or the State Government as the case may be, acting in good faith, or intended to be done in pursuance of this Act, or of any rules made thereunder.

Protection of action taken in good faith.

**54.** (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Power of Central Government to make rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**55.** (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

Power of State Government to make rules.

(2) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

**56.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulty.

Provided, that no such order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 360 of the Code of Criminal Procedure, 1973 and the provisions of the Probation of Offenders Act, 1958 not to apply.

**57.** The provisions of section 360 of the Code of Criminal Procedure, 1973 and the provisions of the Probation of Offenders Act, 1958 shall not apply to any person who is found guilty of having committed an offence under this Act. 2 of 1974.  
20 of 1958.

Sections 193, 195, 199 and 203 of Indian Penal Code to apply.

**58.** The provisions of sections 193, 195, 199 and 203 of the Indian Penal Code shall apply to any person who is guilty of having committed an offence under this Act. 45 of 1860.

Act not in derogation of any other law.

**59.** The provisions of this Act, shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

## STATEMENT OF OBJECTS AND REASONS

Trafficking in human beings is one of the largest organised crime violating basic human rights. Trafficking in human beings may be for sexual and physical exploitation and also for other forms of exploitation like forced labour, etc. This is primarily fueled by poverty, illiteracy and lack of livelihood options. Majority of the Trafficking is within the country. However, there are instances where large number of persons are trafficked from neighboring countries and to other countries especially Middle East.

2. Presently, the subject matter of trafficking of persons is dealt with under the provisions of the Indian Penal Code, 1860 and the Immoral Traffic (Prevention) Act, 1956. Section 370 of Indian Penal Code, 1860 only defines and penalises the offence of trafficking of persons and, whereas, the provisions of the Immoral Traffic (Prevention) Act, 1956 deals with trafficking of persons for the purpose of commercial sexual exploitation and it does not recognise trafficking of persons for the purpose of physical and other forms of exploitation.

3. Keeping in view of the above deficiencies in the existing legislations and after considering the issues relating to prevention, rescue and rehabilitation of victims of trafficking, it has been considered necessary to bring a comprehensive legislation, namely, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, covering all related aspects of trafficking of persons.

4. The salient features of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, *inter alia*, are as follows:—

(a) it aims to prevent the trafficking of persons, to prosecute offenders and to provide care, protection and rehabilitation to the victims of trafficking;

(b) it creates a conducive legal, economic and social environment for the victims of trafficking and also addresses the transnational nature of the crimes;

(c) provides for dedicated institutional mechanism at District, State and National level for prevention, protection, investigation and rehabilitation aspects relating to trafficking;

(d) it provides for new offences with stringent punishment and fine, which are aggravated in nature and not addressed in existing laws;

(e) it provides for timely disposal of cases and repatriation of the victims;

(f) it provides for the confidentiality of victims, witnesses and complainants by not disclosing their identity. The confidentiality of the victims is maintained by recording their statement through video conferencing and by *in camera* proceedings;

(g) it also provides for Rehabilitation Fund for the welfare and rehabilitation of victims to ensure timely relief to the victims and also addresses their physical, mental trauma, etc.;

(h) in order to break the organised nexus, both at national and international level, the Bill proposes for attachment and forfeiture of property and to remit the proceeds of crime in the Rehabilitation Fund;

(i) it also provides for immunity to victims for certain criminal actions against them; and

(j) it is also proposed to designate a Sessions Court in each district for speedy disposal of the cases under the proposed legislation and for this purposes provides for appointment of Special Public Prosecutors to deal with such cases in a time bound manner.

5. The Bill seeks to achieve the above objectives.



*Notes on clauses*

*Clause 2* of the Bill defines various expressions used in the Bill and provides that words and expressions used but not defined in the proposed Bill and defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Information Technology Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015, shall have the meanings respectively assigned to them in those Acts.

*Clause 3* of the Bill seeks to provide for the establishment of the National Anti-Trafficking Bureau by the Central Government, by notification, having police officers and other officers of such appropriate ranks as may be necessary for the discharge of its functions. Sub-clause (3) further provides that the manner of selection, deputation, functioning and reporting of the officers and employees of the Bureau, shall be in the manner as may be prescribed.

*Clause 4* of the Bill seeks to provide for the functions of the Bureau including the function to co-ordinate and monitor surveillance and preventive efforts alongwith the known or probable routes; facilitate surveillance, enforcement and preventive steps at source, transit and destination points; maintain co-ordination between various law enforcement agencies and non-Governmental organisations and other stakeholders; strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence; increase international co-operation and co-ordination with concerned authorities in foreign countries and international organisations, in operational and long-term intelligence in investigation, mutual legal assistance, to facilitate universal action for prevention and suppression and to implement any obligation under various international conventions and protocols that are in force in respect of counter measures; co-ordinate actions and enforcement by various bodies or authorities established under the Act; co-ordinate actions taken by the concerned Ministries, Departments or organisations of the Government, especially linking the source of transit to destination and connecting all stakeholders; review measures for combating, preventing and formulating co-ordinated strategy of action by various law enforcement agencies; make sustained efforts for capacity building and training of agencies; bring out resource material including education curriculum for children, Panchayat Raj institutions, enforcement agencies, judicial officers and other stakeholders; co-ordinate investigating activities among the Districts, States and with other countries in case of cross-border trafficking of persons; co-ordinate the investigation, where international ramifications are reported or suspected; co-ordinate investigation, where inter-State ramifications are reported or suspected across two or more States or Union-territory Administrations; undertake and facilitate other investigators for investigating offences from the organised crime perspective; develop and monitor a database on every crime under this Act; co-ordinate with any national or international investigating or law enforcement agencies and civil society organisations; facilitate inter-State and international transfer of evidence in investigation as well as video conferencing in judicial proceedings; facilitate frequent meetings of the State Police Nodal Officers to facilitate, monitor and evaluate the establishment and functioning of Anti-Trafficking Units; provide necessary support for investigation by the Anti-Trafficking Units, where such requests are made; undertake steps to enhance the professional skills of Anti-Trafficking Police Officers, Anti-Trafficking Units and all concerned with the investigation and prosecution of cases; facilitate inter-State and trans-border transfer of evidence and materials, witnesses and others for expediting prosecution; protection of witnesses, victims, complainants and affected families, as the case may be; undertake steps for timely and effective action on post-rescue care and protection of any person who is trafficked, including steps towards rehabilitation by the concerned agencies, so that their rights are ensured, and that they are not re-trafficked; monitor and facilitate victim and witness protection protocols, rules and procedures including video conferencing during trial of offences which have ramifications across States and beyond borders; and develop minimum standards of care and advice for all concerned, in matters of compliance.



*Clause 5* of the Bill seeks to provide for the investigation by the Bureau which includes that the Bureau may take over investigation of any offence under this Act, referred to it by two or more States; sub-clause (2) provides that where an offence is referred to the Bureau under sub-clause (1) of clause 5, the State Government shall not proceed with the investigation of the offence and shall forthwith transmit the relevant documents and records to the Bureau; till the Bureau takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation of an offence under this Act. Sub-clause (4) provides that while investigating any offence under this Act, the Bureau, having regard to the gravity of the offence and other relevant factors, may if it is expedient to do so, request the State Government to associate with the investigation; or with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence. Sub-clauses (5) and (6) provides that while investigating any offence under this Act, the Bureau may also investigate any other offence under any law for the time being in force, which the accused is alleged to have committed, if the offence is connected with such other offence and the State Government shall extend assistance and co-operation to the Bureau for investigation of an offence under the Act. Sub-clause (7) provides that save as otherwise provided, nothing contained in the Act shall affect the powers of the State Government to investigate and prosecute any offence under the Act or other offences under any other law for the time being in force.

*Clause 6* of the Bill seeks to provide that the State Government shall appoint a State Nodal Officer, not below the rank of Director in the State Government, who shall be responsible for follow up action under the Act, as per the direction of the State Anti-Trafficking Committee and co-ordinate with other Government agencies and civil society organisations, provide relief and rehabilitation services through District Anti-Trafficking Unit and other Government agencies as well as civil society organisations and liaison with the State Police Nodal Officer, National Anti-Trafficking Relief and Rehabilitation Committee for all matters relating to relief and rehabilitation.

*Clause 7* of the Bill seeks to provide that the State Government shall appoint a State Police Nodal Officer of such rank as may be specified by that Government, who shall be responsible for all the activities in the prevention and combating of trafficking of persons in the State and also to monitor the functioning of Anti-Trafficking Police Officers and Anti-Trafficking Units in the State and co-ordinate and monitor inter-State and trans-border transfer of persons rescued, witnesses, evidence and offenders under this Act and liaison with State Nodal Officer and such other functions as may be prescribed.

*Clause 8* of the Bill seeks to provide that the State Government shall designate one police officer not below the rank of Superintendent of Police of the District to be the District Police Nodal Officer on matters relating to trafficking of persons and responsible for all the activities in the District concerned and perform such other functions as may be prescribed. Sub-clause (2) provides that the District Police Nodal Officer shall be the convener of the District Anti-Trafficking Committee and shall report to the State Police Nodal Officer in every matter relating to an offence of trafficking of persons including rescue, investigation and inter-State transfer of a person who is trafficked and also of the offenders. Sub-clause (3) provides that the District Police Nodal Officer shall monitor the functioning of Anti-Trafficking Unit and provide necessary assistance to them for the effective discharge of their duties.

*Clause 9* of the Bill seeks to provide that the State Government shall designate for each District such number of Anti-Trafficking Police Officers for matters related to trafficking of persons, including prevention of trafficking, rescue and protection of the victims, investigation and prosecution and the State Government shall designate for each District such number of Anti-Trafficking Police Officers for matters related to trafficking of persons, including prevention of trafficking, rescue and protection of the victims, investigation and prosecution.

*Clause 10* of the Bill seeks to provide that the appropriate Government shall set up for each District or a group of Districts, such number of Anti-Trafficking Units, for dealing with

all matters of prevention, rescue, protection and care of victims and witnesses and of investigation and prosecution of any offence under the Act. Sub-clause (2) provides that every local police station shall undertake every activity in matters of rescue, investigation, prevention and protection of persons trafficked under this Act and where the Anti-Trafficking Unit is not functional. Sub-clause (3) provides that the State Government shall appoint for every Anti-Trafficking Unit such number of subordinate police officers including women police officers as it deems necessary for the discharge of the functions of the Anti-Trafficking Unit and vest in them with all the powers to investigate any offence committed within its local jurisdiction under the Act and the officer-in-charge of a police station after registering the First Information Report under section 154 of the Code of Criminal Procedure, 1973, shall take all necessary action for immediate rescue and protection and then transfer the case to the Anti-Trafficking Unit.

*Clause 11* of the Bill seeks to provide for the establishment of National Anti-Trafficking Relief and Rehabilitation Committee by the Central Government and by notification. Sub-clause (2) provides for the composition of the Committee which shall consist of a Chairperson, who is the Secretary, Ministry of Women and Child Development, Member-Secretary who is the Head of National Anti-Trafficking Bureau, representatives from Ministry of Home Affairs, Ministry of External Affairs, Ministry of Labour and Employment, Ministry of Social Justice and Empowerment, Ministry of Panchayat Raj, Ministry of Health and Family Welfare, Legislative Department, four representatives from registered civil society organisations active in the prevention, rescue and rehabilitation of victims and such other representatives of the Ministries or Departments or experts representing different States, as may be prescribed. Sub-clause (3) seeks to provide for the functions of the National Anti-Trafficking Relief and Rehabilitation Committee, including to facilitate and ensure rehabilitation and relief services including compensation, repatriation, re-integration to the victims through concerned Ministries, Departments and statutory bodies; provide for Protection Homes and Rehabilitation Homes to enable the immediate and long term sustainable rehabilitation of victims, ensure the effective co-ordination between the concerned authorities both within the country as well as with other countries for the repatriation of victims; seek reports from appropriate Government, State Anti-Trafficking Committee, District Anti-Trafficking Committee, on the quality of services and the functioning of the Protection Homes and Rehabilitation Homes; maintain and monitor the Rehabilitation Fund established under clause 30 and such other functions as may be prescribed.

*Clause 12* of the Bill seeks to provide that the appropriate Government shall establish a State Anti-Trafficking Committee to oversee the implementation of this Act and advise the State Government and District Anti-Trafficking Committees on matters relating to prevention of trafficking, protection, repatriation and rehabilitation of victims and shall consist of a Chairperson, who is the Chief Secretary and other Members, such as Director General of Police; Secretary, Department of Women and Child, Secretary, Home Department; Secretary, Labour Department; Secretary, Health Department; Secretary, State Legal Services Authority; Secretary, Law Department; Protector of Emigrants, Ministry of External Affairs; State Police Nodal Officer; State Nodal Officer; two social workers out of which one shall be a woman and such other members as may be prescribed. Sub-clause (3) provides for the functions of the State Anti-Trafficking Committee to identify the roles and responsibilities of each Department at State or District level for effective implementation of the Act and the rules made under it; arrange for appropriate training and sensitisation of functionaries of all personnel including Governmental and non-Governmental; develop effective networking and linkages with local non-Governmental organisations for specialised services and technical assistance like vocational training, education, healthcare, nutrition, mental health intervention, drug de-addiction and legal aid services; review and monitor the functioning of District Anti-Trafficking Committee; make necessary funds available to the District Anti-Trafficking Committee for providing or setting up required facilities for the implementation of the Act, and such other functions and duties as may be prescribed. Sub-clause (4) provides that the State Anti-Trafficking Committee shall co-ordinate with Bureau and National Anti-Trafficking Relief

and Rehabilitation Committee to provide all necessary assistance and inputs as may be required to prevent offences of trafficking of persons especially, those that have inter-State and international ramifications and have features of an organised crime.

*Clause 13* of the Bill seeks to provide that the appropriate Government shall, by notification, constitute for every District, a District Anti-Trafficking Committee for exercising the powers and performing such functions and duties in relation to prevention, rescue, protection, medical care, psychological assistance and need-based rehabilitation of victims and will consist of a Chairperson who is a District Magistrate or Additional District Magistrate, a Convener who is a District Police Nodal Officer and District Officer for Women and Child Development; representative from District Officer for Women and Child Development, District Legal Services Authority and Child Welfare Committee; two Civil Society Organisations and the Non-Governmental Organisations working in the field of prevention of trafficking and related issues and other members as may be prescribed. Sub-clause (3) further provides for the functions to be performed by the District Anti-Trafficking Committee, such as, direct and facilitate the person in-charge of the Protection Homes and Rehabilitation Homes, as the case may be, and submit an individual care plan to the District Anti-Trafficking Committee; ensure care, protection, appropriate rehabilitation or restoration of all victims, based on each victims' individual care plan and by passing necessary directions to Protection Homes and Rehabilitation Homes, co-ordinate with other State Departments and Panchayati Raj institutions, to keep a check on the children who drop out from schools and those children who are covered by various schemes and have stopped accessing the benefits of those schemes and inform such cases to State Anti-Trafficking Committee and take appropriate actions; facilitate in a time bound manner or in the manner as may be prescribed, the inter-State repatriation of victims or persons subjected to bonded labour; facilitate survey of the areas and vulnerable population to identify source, transit and destination areas of trafficking of persons and based on the information received, draw up an action plan for the prevention and protection of people who are vulnerable to trafficking and implementation of the action plan; create programmes for awareness generation, community mobilisation and empowerment of vulnerable social groups against trafficking of persons; assist the Anti-Trafficking Police Officer, the Anti-Trafficking Unit or the local police, as the case may be, in conducting rescue operation, transferring victims to the nearest Protection Home, in connection with prevention of trafficking of persons, protection of victims and their rehabilitation, etc., and such other functions as may be prescribed. Sub-clauses (4) and (5) provide that the appropriate Government shall provide adequate resources to the District Anti-Trafficking Committee for carrying out prevention, protection and rescue procedures and the District Anti-Trafficking Committee shall furnish a report to the State Anti-Trafficking Committee on quarterly basis.

*Clause 14* of the Bill seeks to provide that the District Anti-Trafficking Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the victims and in case of child victim, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.

*Clause 15* of the Bill seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall *mutatis mutandis* apply in relation to a search and seizure in respect of an offence under this Act.

*Clause 16* of the Bill seeks to provide that where a police officer or Anti-Trafficking Police Officer or Anti-Trafficking Unit has reason to believe that it is necessary to rescue a person without undue delay due to the imminent danger that may cause to his life and person, he or it may remove such person from any place or premises and produce him before the Magistrate or Child Welfare Committee, as the case may be, and shall take all necessary steps for the medical examination of such person for the purposes of determination as to the age, the assessment or detection of trauma, injury, illnesses incidental thereto to him and the provisions of section 164A of the Code of Criminal Procedure, 1973 and section 27 of the Protection of Children from Sexual Offences Act, 2012 shall *mutatis mutandis* apply in relation to a medical examination of any person under this section. Sub-clause (3) provides that the

police officer or Anti-Trafficking Police Officer or Anti-Trafficking Unit, as the case may be, shall inform the District Anti-Trafficking Committee about the rescue conducted under this section and the Committee shall take appropriate actions for providing interim relief and further rehabilitation services to the person rescued.

*Clause 17* of the Bill seeks to provide that the District Anti-Trafficking Committee shall assist the Anti-Trafficking Police Officer or the Anti-Trafficking Unit or any police officer, as the case may be, in rescue operation and transferring any person to the nearest Protection Home or any other suitable institution, as deemed fit by the District Anti-Trafficking Committee. Sub-clause (2) provides that the Anti-Trafficking Police Officer or Anti-Trafficking Unit or any police officer, as the case may be, shall produce the person rescued before the Magistrate or the Child Welfare Committee, as the case may be, without any loss of time but within twenty-four hours of the rescue. Sub-clause (3) provides that the Magistrate may, after making an inquiry as to the age of the person rescued and if it is found that the person is a child, pass such orders as he deems necessary for the care and protection of the person, and where the Magistrate is satisfied, after making an inquiry as to the age of the victim and it is found that the victim is not a child, the Magistrate may, make an order that the victim be placed, for such reasonable period, in a Rehabilitation Home and if the victim or any person rescued is not a child and he voluntarily makes an application supported by an affidavit for his release and if the Magistrate is of the opinion that such application has not been made voluntarily, the Magistrate may reject such application after recording his reasons in writing and in discharging his functions, a Magistrate may summon a mental healthcare professional, or psycho social counsellor, or clinical psychologist, or psychotherapist to assist him and may, for this purpose, in consultation with the District Anti-Trafficking Committee and District Legal Services Authority, maintain a list of experienced social workers.

*Clause 18* of the Bill seeks to provide that the Anti-Trafficking Police Officer or Anti-Trafficking Unit or any police officer, as the case may be, shall ensure that investigation including search and seizure must be conducted in accordance with the provisions laid down in the Code of Criminal Procedure, 1973, and any other law for the time being in force. Sub-clause (2) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Anti-Trafficking Police Officer or the officer-in-charge of the police station, as the case may be, shall forward the report on completion of investigation to the court having jurisdiction within ninety days from the date of registration of first information report. Sub-clause (3) provides that the investigating officer, while forwarding the report on completion of investigation of an offence under this Act, punishable with imprisonment of more than two years, has reason to believe that any amount suspected to have been obtained by the accused by way of commission of the offence and held by him in any bank account, the investigating officer may submit an application before the designated court for freezing of such amount and the designated court, on satisfaction, after an inquiry made in this behalf, may freeze such amount in any such bank account and may, upon conviction, order that such amount lying in such bank account, shall be remitted to the Rehabilitation Fund.

*Clause 19* of the Bill seeks to provide that where a person is prosecuted for committing or abetting or attempting to commit any offence under this Act in respect of a child or a woman or a person suffering from physical or mental disability, unless it is specified, the designated court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

*Clause 20* of the Bill seeks to provide that the State and the District Anti-Trafficking Committees shall undertake all measures and recommend strategies and plans to protect and prevent vulnerable persons from being trafficked and such measures shall include, co-ordinating the implementation of all the programmes, schemes and plans relating to the prevention of trafficking of persons with any statutory bodies, organisations or agencies as well as Panchayati Raj institutions; facilitating the implementation of livelihood and educational programmes for vulnerable communities; facilitating the implementation of

programmes and schemes sponsored by various Ministries and Departments of the appropriate Government; co-ordinating with corporate sector to implement the various schemes, programmes for the prevention of trafficking of persons, ensuring accountability of the concerned agencies, by regular review and appropriate action; developing appropriate law and order framework to ensure prevention of trafficking of persons; undertaking vulnerability mapping of the State and give focus and attention to the challenging areas, commissioning independent research on various aspects of trafficking and ensure follow up action, organising interface between law enforcement agencies, other Government Departments and agencies with the voluntary organisations or non-Governmental organisations in matters of prevention of trafficking of persons, bringing out annual report on trafficking of persons in the State, networking with the Bureau and other State Anti-Trafficking Committees, especially with those States where source-transit-destination linkages exist, and undertake all activities for joint action programmes by bringing in common policies and programmes; linking with the Bureau and the Central Government and other concerned agencies, in case of trans-border trafficking of persons and ensure appropriate action.

*Clause 21* of the Bill seeks to provide that the appropriate Government shall maintain either directly or through voluntary organisations or non-Governmental organisations as many Protection Homes as necessary and to be managed in the manner, as may be prescribed for the immediate care and protection of the victims or any person rescued and the Protection Homes shall provide for shelter, food, clothing, counselling and medical care that is necessary for the victims or any person rescued and such other services in the manner, as may be prescribed.

*Clause 22* of the Bill seeks to provide that the appropriate Government, as it deems fit, shall maintain either directly or through voluntary organisations or non-Governmental organisations, one or more Rehabilitation Homes in each District managed in the manner as may be prescribed for the purpose of providing long-term rehabilitation of victims or any person rescued. Sub-clause (2) provides that the appropriate Government may also utilise any existing shelter home for the purposes of rehabilitation.

*Clause 23* of the Bill seeks to provide that notwithstanding anything contained in any other law for the time being in force, a Protection Home and Rehabilitation Home shall be registered under this Act in such manner as may be prescribed by the appropriate Government and if any person in-charge of Protection Home and Rehabilitation Home providing shelter and rehabilitation to victims or any person rescued contravenes any of the provisions of sub-clause (1) of clause 23, he shall be punished with imprisonment which may extend to one year or with fine which shall not be less than one lakh rupees, or with both.

*Clause 24* of the Bill seeks to provide that a victim or any person rescued on behalf of him may make an application to the Magistrate within the local limits of whose jurisdiction the victim or such other person is trafficked or suspected to be trafficked for an order that he may be kept in a Rehabilitation Home and in case the victim or any person rescued is a child, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply. Sub-clause (2) provides that the Magistrate may, pending inquiry under sub-clause (3) or sub-clause (4) of clause 17, direct that the victim or any person rescued be kept in such care and protection as he may consider proper, having regard to the circumstances of the case and the Magistrate shall consult the District Anti-Trafficking Committee before taking a final decision with respect to the rehabilitation of the victim or such other person.

*Clause 25* of the Bill provides that where the person rescued is a victim, the District Anti-Trafficking Committee shall ensure that the rehabilitation of the person is not contingent upon criminal proceedings being initiated against the accused or the outcome thereof.

*Clause 26* of the Bill seeks to provide that the District Anti-Trafficking Committee or the Child Welfare Committee, as the case may be, shall be responsible for the repatriation of victims by co-ordinating with their counterparts in any other District and where the State Anti-Trafficking Committee is of the opinion that a victim from a foreign country needs to be



repatriated to the country of origin, it may deal with the matter under any law for the time being in force. Sub-clause (3) provides that the State Nodal Officer shall obtain informed written consent from the victim for repatriation purposes, and where needed, shall make arrangements for the counselling of the victim by trained psycho social professionals. Sub-clause (4) provides that the repatriation of the victims shall be completed within a period of three months for inter-State repatriation, and within six months in case of cross border repatriation from the date of rescue by the District Anti-Trafficking Committee, or the Child Welfare Committee, or State Police Nodal Officer, as the case may be, and any delay in repatriation shall be recorded for reasons in writing and shall be reported to the National Anti-Trafficking Relief and Rehabilitation Committee and the Bureau forthwith.

*Clause 27* of the Bill seeks to provide that upon application for interim relief by the victim, the District Anti-Trafficking Committee or Child Welfare Committee, as the case may be, shall take immediate steps to award interim relief to the victim as deemed appropriate not later than thirty days, taking into consideration all aspects, including physical, mental trauma and the other requirements of the victim and the appropriate Government shall provide adequate funds at the disposal of the District Anti-Trafficking Committee for the purposes under sub-clause (1) of clause 27, within a period of one month from the date of commencement of this Act.

*Clause 28* of the Bill seeks to provide that the District Anti-Trafficking Committee shall take steps to ensure that appropriate relief is provided to the victim, within sixty days from the date of filing of charge sheet and the relief amount shall be in addition to any other compensation including any amount or benefit payable by way of any scheme of the appropriate Government or pursuant to any order of the court under any law for the time being in force.

*Clause 29* of the Bill seeks to provide that where any property is, or is likely to be, used for the commission of an offence under this Act and the property is concealed, transferred or dealt with in any manner which may result in frustrating any proceedings under this Act, the designated court may attach such property and the designated court shall give an opportunity to be heard to the person who is the owner or occupier of the property. Sub-clause (2) provides that where a person has been convicted of any offence under this Act, the designated court shall, in addition to awarding any punishment, declare that any property, movable or immovable or both, belonging to such person or held by any person on his behalf, which has been used for the commission of that offence or accrued thereby, or which has been attached under sub-clause (1), shall stand forfeited to the appropriate Government and the same may be authorised for the purpose of realisation of any fine imposed by the designated court and the proceeds shall be remitted to the Rehabilitation Fund.

*Clause 30* of the Bill provides for Rehabilitation Fund by the Central Government for the welfare and rehabilitation of the victims under this Act and there shall be credited thereto any grants and loans made by the appropriate Government, any voluntary donations, contributions or subscriptions, whether or not for any specific purpose as may be decided upon by the Central Government, any fine recovered for the commission of an offence under the Act which may include recovery of fine specified in section 421 of the Code of Criminal Procedure, 1973, the amount seized from any bank account frozen under sub-clause (4) of clause 18 and any other sums as may be received. Sub-clause (2) provides that the State Government may supplement the Rehabilitation Fund and the Rehabilitation Fund shall be utilised under this Act by the appropriate Government for the establishment and administration of Protection Homes and Rehabilitation Homes, supporting innovative programmes for the welfare and rehabilitation of the victims, strengthening legal assistance and support, providing entrepreneurial support, skill development training or vocational training, providing aftercare facilities for capital and infrastructure to the victims who are ready to integrate into mainstream society by setting up small business or profession, providing victim and witness protection, awareness generation programmes for the prevention of trafficking of persons, creating community-based programmes to identify, report and prevent trafficking of persons, providing

specialised professional services, counsellors, translators, interpreters, social workers, mental health care professionals, vocational trainers or such other specialised professionals, for the victims and any other activity that may be required for effective implementation of the Act. Sub-clause (4) provides that the Rehabilitation Fund shall be maintained and monitored by the National Anti-Trafficking Relief and Rehabilitation Committee and shall be made available to the State and District Anti-Trafficking Committees towards prevention, protection and prosecution of matters relating to trafficking of persons. Sub-clause (6) provides that any fine recovered for the commission of an offence under Act shall also be remitted to the Rehabilitation Fund which includes recovery of fine specified in section 421 of the Code of Criminal Procedure, 1973 and the generation, dissemination and utilization of Fund shall be regulated in the manner as may be prescribed by the Central Government.

*Clause 31* of the Bill seeks to provide for the offence of aggravated forms of trafficking, such as trafficking for the purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion or by subtle means including, allegations of accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities, or for the purpose of bearing child, either naturally or through assisted reproductive techniques, or by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing him to remain in exploitative condition, by administering any chemical substance or hormones on a person for the purpose of early sexual maturity, or for the purpose of marriage or under the pretext of marriage trafficks a woman or child after marriage, or by causing serious injury resulting in grievous hurt or death of any person, including death as a result of suicide as a consequence of trafficking of person, or who is a pregnant woman or the offence results in pregnancy of the person, or by causing or exposing the person to a life-threatening illness including acquired immuno deficiency syndrome or human immunodeficiency virus, or for the purpose of begging, or who is a mentally ill person as defined in clause (1) of section 2 of the Mental Health Act, 1987 or a person with disability as defined in clause(s) of section 2 of the Rights of Persons with Disabilities Act, 2016, or as a consequence of trafficking, the person becomes mentally ill or disabled, or by encouraging or abetting any person to migrate illegally into India or Indians in to some other country.

*Clause 32* of the Bill seeks to provide that whoever commits the offence of aggravated form of trafficking of a person shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

*Clause 33* of the Bill seeks to provide that whoever is convicted of the offence of trafficking on more than one occasion shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine which shall not be less than two lakh rupees.

*Clause 34* of the Bill seeks to provide that whoever keeps or manages, or acts or assists in the keeping or management of a premises to be used as a place for trafficking of any person shall be punished with rigorous imprisonment for a term which may extend to five years and also with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term which shall not be less than seven years and with fine which may extend to two lakh rupees. Sub-clause (92) also provides that whoever being a tenant, lessee, occupier or person in-charge of any premises, uses, or knowingly allows any other person to use, the premises or any part thereof as a place for trafficking of persons, or being the owner, lessor or landlord of any premises, or the agent of such owner, lessor, or landlord, lets out the same, or any part thereof with the knowledge that the same or any part thereof is intended to be used as a place of exploitation of the victim, or is wilfully a party to the use of the premises or any part thereof as a place for trafficking of persons, shall be punished on first conviction with imprisonment for a term which may extend to three years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend



to five years and also with fine which may extend to two lakh rupees. The clause further provides for an explanation, that for the purposes of sub-clause (2) of clause 34, it shall be presumed until the contrary is proved, that any person referred to in items (i) or (ii) of sub-clause (2) has not exercised due diligence in allowing to use or letting out the premises or in allowing the premises or any part thereof to be used as a place of exploitation or, as the case may be, and has knowledge that the premises or any part thereof was being used as a place of exploitation of the victim. The clause also provides that notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in items (i) or (ii) of sub-clause (2), of any offence under this Act in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void with effect from the date of the said conviction.

*Clause 35* of the Bill seeks to provide that notwithstanding anything contained in any other law for the time being in force, the Magistrate shall, on receipt of information from the police or otherwise, that any premises or any part thereof is being used for the purpose of trafficking of persons, issue notice to the owner, lessor or landlord of the premises or part thereof, or the agent of the owner, lessor or landlord, or on the tenant, lessee, occupier of, or any other person in-charge of such premises or part thereof, to show cause within seven days of the receipt of the notice why the same should not be sealed or attached for improper use thereof; and, after hearing the person concerned, if the Magistrate is satisfied that the premises or part thereof is being used for trafficking of persons, then, the Magistrate may pass an order by directing eviction of the occupier or any person from the premises, within seven days of the passing of the order; directing that the owner, lessor, or landlord, or the agent of the owner, before letting out the premises or any part thereof, which, during the rescue or search has been found to be used for the purpose of trafficking, shall obtain the previous permission of the Magistrate and the Magistrate shall pass appropriate orders within thirty days from the date of order and where no permission is granted within such period, the permission shall be deemed to have been granted. Sub-clause (2) provides that if the Magistrate, after the show cause notice issued under sub-clause (1) of clause 35, finds that the premises or any part thereof was used for trafficking of any person, the owner, lessor, landlord as well as the agent of the owner, lessor, landlord exercised due diligence in letting out premises or any part thereof, then, the same shall be restored to the owner, lessor or landlord, or the agent of the owner with an undertaking that the premises or any part thereof shall not be leased out, or otherwise given possession of, or for the benefit of the person who was allowing the improper use therein, within two months of the issuing of the show cause notice by the Magistrate. Sub-clause (3) provides that if the Magistrate is satisfied that the premises or part thereof was not used for trafficking of any person, he shall cause the same to be restored to the owner, lessor or landlord, or the agent of the owner lessor, landlord, tenant, lessee, occupier or any other person in-charge of the premises or part thereof within two months of the issuance of the show cause notice and when an owner, lessor or landlord, or the agent of the owner, lessor or landlord fails to comply with a direction given under item (ii) of sub-clause (1), he shall be punished with fine which may extend to one lakh rupees.

*Clause 36* of the Bill seeks to provide that a person is said to promote, procure or facilitate the commission of trafficking of person, if that person, produces, prints, issues or distributes unissued, tampered or fake certificates, registration or stickers as proof of compliance with Government requirements, or advertises, publishes, prints, broadcasts or distributes, or causes the advertisement, publication, printing or broadcast or distribution by any means, including the use of information technology or any brochure, flyer or any propaganda material that promotes trafficking of person or exploitation of a trafficked person in any manner, or assists in the conduct of misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of clearances and necessary documents from Government agencies for the purpose of trafficking of any person. Sub-clause (2) provides for rigorous imprisonment for a term which shall not be less than three years, but which may

extend to seven years, and shall also be liable to fine which shall not be less than one lakh rupees for the punishment for promoting or facilitating trafficking of person.

*Clause 37* of the Bill seeks to provide that whoever abets any person to commit any offence under this Act and if the act abetted is in consequence of the abetment, shall be punished with the punishment provided for that offence.

*Clause 38* of the Bill seeks to provide that notwithstanding anything contained in any other law for the time being in force, whoever knowingly or having reason to believe that a person has been trafficked, fails to perform a duty, which he is entrusted under this Act, for providing care, protection and rehabilitation to a victim or performs duty but knowingly causes physical or mental injury or hardship or trauma to the victim shall be punished with fine which shall not be less than fifty thousand rupees and in the event of a second or subsequent offence with rigorous imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees.

*Clause 39* of the Bill seeks to provide that whoever buys or sells any person for a consideration, shall be punished with rigorous imprisonment for a term which shall not be less than seven years but may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees. Sub-clause (2) provides that whoever solicits or publicises electronically, taking or distributing obscene photographs or videos or providing materials or soliciting or guiding tourists or using agents or any other form which may lead to the trafficking of a person shall be punished with rigorous imprisonment for a term which shall not be less than five years but may extend to ten years, and shall also be liable to fine which shall not be less than fifty thousand rupees and may extend to one lakh rupees.

*Clause 40* of the Bill seeks to provide that whoever hires or otherwise obtains possession, or lets to hire, or in any manner disposes of a person, for the purpose of trafficking of person, shall be punished with imprisonment of either description for a term which shall not be less than three years but may extend to five years and shall also be liable to fine which shall not be less than one lakh rupees.

*Clause 41* of the Bill seeks to provide that whoever commits trafficking of a person with the aid of media, including, but not limited to print, internet, digital or electronic media, shall be punished with rigorous imprisonment for a term which shall not be less than seven years but may extend to ten years and shall also be liable to fine which shall not be less than one lakh rupees. Sub-clause (2) provides that whoever distributes, or sells or stores, in any form in any electronic or printed form showing incidence of sexual exploitation, sexual assault, or rape for the purpose of extortion or for coercion of the victim or his family members, or for unlawful gain shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to seven years and shall also be liable to fine which shall not be less than one lakh rupees.

*Clause 42* of the Bill seeks to provide that no report or any newspaper or magazine or news-sheet or audio-visual media or any other form of communication regarding any inquiry or investigation or judicial proceedings at any stage shall disclose the name, address or any other particulars, which may lead to the identification of a victim or witness of trafficking of person under this Act shall be published and for reasons to be recorded in writing, the designated court may permit such disclosure, if in its opinion, such disclosure is in the best interest of the victim. It also provides that any person who contravenes the provisions of sub-clause (1) shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both and in case, the victim is a child, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.

*Clause 43* of the Bill seeks to provide that where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the person found guilty of such offence, shall be liable to punishment under such law which provides for punishment which

is greater in degree. Sub-clause (2) provides that a designated court convicting a person of any offence under this Act may also pass an order for the auction of the premises or any part thereof and the proceeds of such auction shall be ordered to be remitted to the Rehabilitation Fund. Sub-clause (3) provides that when an occupier or any other person fails to comply with a direction given under item (i) of sub-clause (1) of clause 35, he shall be deemed to have committed an offence under clause 34 and shall be punished accordingly.

*Clause 44* of the Bill seeks to provide that whoever attempts to commit an offence punishable by this Act with imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

*Clause 45* of the Bill seeks to provide that nothing is an offence which is committed or attempted to have been committed by a victim, punishable with death or imprisonment for life or for imprisonment for ten years, if the offence is committed or attempted to have been committed, under coercion or compulsion or intimidation or threat or undue influence by any person and where, at the time of committing the offence, the victim is subjected to reasonable apprehension of his death, grievous hurt or any other injury to him or to any other person whom he is interested in.

*Clause 46* of the Bill seeks to provide for Designated Courts for the purposes of providing speedy trial of any offence under this Act. It further provides that the State Government shall, in consultation with the Chief Justice of the High Court, by notification, designate for each district, a Court of Session, within two months from the date of commencement of this Act, to try any offence under this Act.

*Clause 47* of the Bill seeks to provide that the appropriate Government may, by notification, appoint Special Public Prosecutors for every designated court for conducting cases under this Act and every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provisions of that Code shall have effect accordingly. Sub-clause (3) provides that subject to the provision contained in section 301 of the Code of Criminal Procedure, 1973, the victim shall be entitled to the assistance of a legal counsel of his choice for any offence under this Act and if the victim is unable to afford a legal counsel, the Legal Services Authority shall provide a counsel to him.

*Clause 48* of the Bill seeks to provide that the designated court shall complete the trial, as far as possible, within a period of one year from the date of taking into cognizance of any offence under this Act and may record the statement of any victim through video conferencing in any case, where the victim is unable to appear before the court for the reasons of safety or confidentiality. It also provides that in all matters of transborder and inter-State crimes where the victim has been repatriated to any other State or country is unable to attend the court proceedings, the court may order video conferencing to record their statement. It also provides that notwithstanding anything contained in this Act, the inquiry into and trial of offences under this Act, may be conducted *in camera*, if an application is made in this regard by the victim.

*Clause 49* of the Bill seeks to provide that the designated court may order, where applicable, any back wages of the victim to be paid to him. Sub-clause (2) provides that the designated court shall on its own motion or on an application filed by or on behalf of the victim, award compensation under section 357A of the Code of Criminal Procedure, 1973, or under any other law for the time being in force or otherwise at any stage of the proceedings and the appropriate Government shall ensure that the relief ordered by the designated court is paid within sixty days from the date of receipt of the order.

*Clause 50* of the Bill seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of the designated court to the High Court and every appeal under this section shall be preferred within a period of sixty days from the date of judgment, sentence or order appealed against and the High Court may entertain an appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

*Clause 51* of the Bill seeks to provide that the designated court, if on an application made by a victim, witness or a complainant in any proceeding before it or by the Special Public Prosecutor in relation to such victim, witness or a complainant or on its own motion, is satisfied that the life of such victim, witness or a complainant is in danger, it may, for reasons to be recorded in writing, take such measures to protect such victim, witness and the complainant. Sub-clause (2) provides that in particular, and without prejudice to the generality of the provisions of sub-clause (1) of clause 51, the measures which a designated court may take under that sub-section may include, the holding of the proceedings at a place to be decided by the designated court; the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public; the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

*Clause 52* of the Bill seeks to provide that all offences under this Act shall be cognizable and non-bailable. Sub-clause (2) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, (a) nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act with imprisonment of more than two years, (b) no person accused of committing an offence under this Act shall be released on bail or on his own bond unless—(i) the Special Public Prosecutor has been given an opportunity to oppose the application for such release, (ii) where the Special Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail, (c) the victim shall have a right to be heard in all bail matters. Sub-clause (3) provides that the conditions on granting of bail specified in item (b) of sub-clause (2) are in addition to the conditions provided under the Code of Criminal Procedure, 1973.

*Clause 53* of the Bill seeks to provide that no suit, prosecution, or other legal proceeding shall lie against the Central Government or the State Government or any person acting under the directions of the Central Government or the State Government, as the case may be, acting in good faith, or intended to be done in pursuance of this Act, or of any rules made thereunder.

*Clause 54* of the Bill seeks to provide that the Central Government may, by notification, make rules for carrying out the purposes of this Act. It also provides that every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

*Clause 55* of the Bill seeks to provide that the State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Sub-clause (2) provides that every rule made by the State Government, shall be laid, as soon as may be after it is made, before each House of the State Legislature, where it consists of two Houses or where such State Legislature consists of one House, before that House.

*Clause 56* of the Bill seeks to provide that any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removal of the difficulty and no such order shall be made under this section after the expiry of the period of two years from the commencement of this Act. Sub-clause (2) provides that every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

*Clause 57* of the Bill seeks to provide that the provisions of section 360 of the Code of Criminal Procedure, 1973 and the provisions of the Probation of Offenders Act, 1958 shall not apply to any person who is found guilty of having committed an offence under this Act.

*Clause 58* of the Bill seeks to provide that the provisions of sections 193, 195, 199 and 203 of the Indian Penal Code shall apply to any person who is guilty of having committed an offence under this Act.

*Clause 59* of the Bill seeks to provide that the provisions of this Act, shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the Central Government shall, by notification, establish a National Anti-Trafficking Bureau, having police officers and other officers of such appropriate ranks as may be necessary for the discharge of its functions.

2. Sub-clauses (1) and (2) of clause 29 provides that the designated court shall, in addition to awarding any punishment, declare that any property, movable or immovable or both, belonging to such person or held by any person on his behalf, which has been used for the commission of that offence or accrued thereby, or which has been attached under sub-clause (1), shall stand forfeited to the appropriate Government and the same may be authorised for the purpose of realisation of any fine imposed by the designated court and the proceeds shall be remitted to the Rehabilitation Fund.

3. Clause 30 of the Bill provides that the Central Government shall constitute a Rehabilitation Fund for the welfare and rehabilitation of the victims under this Act. It also provides that the State Government may supplement the Rehabilitation Fund. Besides, the Rehabilitation Fund may also be credited through grants and loans made by the appropriate Government; any voluntary donations, contributions or subscriptions; any fine recovered for the commission of an offence under the Act which may include recovery of fine specified in section 421 of the Code of Criminal Procedure, 1973. Further, the proceeds through freezing of the bank accounts, as prescribed under sub-clauses (3) and (4) of clause 18, shall be remitted to the Rehabilitation Fund.

4. Sub-clause (2) of clause 43 provides that the designated court convicting a person may also pass an order for the auction of the premises or any part thereof and the proceeds of such auction shall be ordered to be remitted to the Rehabilitation Fund.

5. The financial implication arising from the establishment of National Anti-Trafficking Bureau is estimated as recurring expenditure of Rs.10 crores in the first year and Rs. 20 crores each in the next two years and for Rehabilitation Fund it is estimated as an initial allocation of Rs. 10 crores and to be augmented subsequently on need basis.

6. It would be difficult to indicate the exact expenditure incurred in the appointment of officers of the National Anti-Trafficking Bureau, etc. The Bill does not envisage any other expenditure of recurring or non-recurring.



## MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 3 of the Bill provides for the manner of selection, deputation, functioning and reporting of the officers and employees of the National Anti-Trafficking Bureau.

2. Sub-clause (4) of clause 7 of the Bill provides that the State Nodal Officer shall perform such other functions as may be prescribed.

3. Sub-clause (1) of clause 8 of the Bill provides that the police officer not below the rank of Superintendent of Police of the District to be the District Police Nodal Officer on matters relating to trafficking of persons and responsible for all the activities in the District concerned, as may be prescribed.

4. Item (xi) of sub-clause (2) of clause 11 of the Bill provides for inclusion of other representatives of the Ministries or Departments or experts representing different States in the composition of the National Anti-Trafficking Relief and Rehabilitation Committee as may be prescribed. Item (vi) of sub-clause (3) of the said clause provides for prescribing other functions of the National Anti-Trafficking Relief and Rehabilitation Committee as may be prescribed.

5. Item (xiii) of sub-clause (2) of clause 12 of the Bill provides for nomination of such other members in the State Anti-Trafficking Committee. Item (vi) of sub-clause (3) of the said clause provides for the functions of the State Anti-trafficking Committee, including the nomination of such other members as may be prescribed.

6. Item (vii) of sub-clause (2) of clause 13 of the Bill provides for nomination of other members in the District Anti-Trafficking Committee, as may be prescribed. Item (iv) of sub-clause (3) of the said clause provides for inter-State repatriation of victims or persons subjected to bonded labour by the District Anti-trafficking Committee in a time bound manner or in the manner as may be prescribed. Item (vii) of sub-clause (3) of the said clause provides for any other function as may be prescribed.

7. Sub-clause (1) of clause 21 of the Bill provides that the appropriate Government shall maintain either directly or through voluntary organisations or non-Governmental organisations as many Protection Homes as necessary and to be managed in the manner, as may be prescribed for the immediate care and protection of the victims or any person rescued. Sub-clause (2) of the said clause provides that the Protection Homes shall provide shelter, food, clothing, counselling and medical care that is necessary for the victims or any person rescued and such other services in the manner, as may be prescribed.

8. Sub-clause (1) of clause 22 of the Bill provides that the appropriate Government, as it deems fit shall maintain either directly or through voluntary organisations or non-Governmental organisations, one or more Rehabilitation Homes in each District managed in the manner as may be prescribed for the purpose of providing long-term rehabilitation to the victims or any person rescued.

9. Sub-clause (1) of clause 23 of the Bill provides that the Protection Homes and Rehabilitation Homes shall be registered under this Act in such manner as may be prescribed by the appropriate Government.

10. Sub-clause (7) of clause 30 of the Bill provides that the generation, dissemination and utilisation of Fund shall be regulated in the manner as may be prescribed by the Central Government.

11. The matters in respect of which rules may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.



## BILL NO.85 OF 2018

*A Bill to provide for a comprehensive mechanism to ban the unregulated deposit schemes and to protect the interest of depositors and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

## CHAPTER I

## PRELIMINARY

1. (1) This Act may be called the Banning of Unregulated Deposit Schemes Act, 2018.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

## Definitions.

**2.** In this Act, unless the context otherwise requires,—

(1) “appropriate Government” means in respect of matters relating to,—

- (i) the Union territory without legislature, the Central Government;
- (ii) the Union territory of Puducherry, the Government of that Union territory;
- (iii) the Union territory of Delhi, the Government of that Union territory; and
- (iv) the State, the State Government;

(2) “company” shall have the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013;

18 of 2013.

(3) “Competent Authority” means an Authority appointed by the appropriate Government under section 7;

(4) “deposit” means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(a) amounts received as loan from a scheduled bank or a co-operative bank or any other banking company as defined in section 5 of the Banking Regulation Act, 1949;

10 of 1949.

(b) amounts received as loan or financial assistance from the Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies;

2 of 1934.

(c) amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(d) amounts received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or persons resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder;

42 of 1999.

(e) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;

(f) amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners;

(g) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);

(h) amounts received by an asset re-construction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

54 of 2002.

43 of 1951.

(i) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of the People Act, 1951;

(j) any periodic payment made by the members of the self-help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government;

(k) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

(l) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—

(i) payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;

(ii) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;

(iii) security or dealership deposited for the performance of the contract for supply of goods or provision of services; or

(iv) an advance under the long-term projects for supply of capital goods except those specified in item (ii):

Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund:

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

*Explanation.*—For the purposes of this clause,—

18 of 2013.

(i) in respect of a company, the expression “deposit” shall have the same meaning as assigned to it under the Companies Act, 2013;

2 of 1934.

(ii) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934, the expression “deposit” shall have the same meaning as assigned to it in clause (bb) of section 45-I of the said Act;

9 of 1932.

(iii) the expressions “partner” and “firm” shall have the meanings respectively assigned to them under the Indian Partnership Act, 1932;

6 of 2009.

(iv) the expression “partner” in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (q) of section 2 of the Limited Liability Partnership Act, 2008;

18 of 2013.

(v) the expression “relative” shall have the same meaning as assigned to it in the Companies Act, 2013;

(5) “depositor” means any person who makes a deposit under this Act;

(6) “deposit taker” means—

(i) any individual or group of individuals;

- (ii) a proprietorship concern;
- (iii) a partnership firm (whether registered or not);
- (iv) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; 6 of 2009.
- (v) a company;
- (vi) an association of persons;
- (vii) a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 or a public trust, whether registered or not); 2 of 1882.
- (viii) a co-operative society or a multi-State co-operative society; or
- (ix) any other arrangement of whatsoever nature, receiving or soliciting deposits, but does not include—
  - (i) a Corporation incorporated under an Act of Parliament or a State Legislature;
  - (ii) a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act, 1949; 10 of 1949.
- (7) “Designated Court” means a Designated Court constituted by the appropriate Government under section 8;
- (8) “insurer” shall have the same meaning as assigned to it in clause (9) of section 2 of the Insurance Act, 1938; 4 of 1938.
- (9) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (10) “person” includes—
  - (i) an individual;
  - (ii) a Hindu Undivided Family;
  - (iii) a company;
  - (iv) a trust;
  - (v) a partnership firm;
  - (vi) a limited liability partnership;
  - (vii) an association of persons;
  - (viii) a co-operative society registered under any law for the time being in force relating to co-operative societies; or
  - (ix) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (11) “prescribed” means prescribed by the rules made by the Central Government or, as the case may be, the State Government under this Act;
- (12) “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
- (13) “public financial institution” shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013; 18 of 2013.
- (14) “Regulated Deposit Scheme” means the Schemes specified under column (3) of the First Schedule;

(15) “Regulator” means the Regulator specified in column (2) of the First Schedule;

(16) “Schedule” means the Schedules appended to this Act;

(17) “Unregulated Deposit Scheme” means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme.

## CHAPTER II

### BANNING OF UNREGULATED DEPOSIT SCHEMES

3. On and from the date of commencement of this Act,—

(a) the Unregulated Deposit Schemes shall be banned; and

(b) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

Banning of Unregulated Deposit Schemes.

4. No deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

Fraudulent default in Regulated Deposit Schemes.

5. No person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

Wrongful inducement in relation to Unregulated Deposit Schemes.

6. A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme under this Act.

Certain scheme to be Unregulated Deposit Scheme.

43 of 1978.

## CHAPTER III

### AUTHORITIES

7. (1) The appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

Competent Authority.

(2) The appropriate Government may, by notification, appoint such other officer or officers as it thinks fit, to assist the Competent Authority in discharging its functions under this Act.

(3) Where the Competent Authority or officers appointed under sub-section (2), for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of such information and particulars as may be prescribed, that any deposit taker is soliciting deposits in contravention of section 3, he may, by order in writing, provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker from the date of the order, in such manner as may be prescribed.

(4) The Competent Authority shall, for the purposes of sub-section (3), have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting investigation or inquiry in respect of the following matters, namely:—

5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;

- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(5) The Competent Authority shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this section.

(6) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(7) Every proceeding under sub-sections (4) and (5) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

(8) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that the officers referred to in sub-section (2) shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Competent Authority.

Designated  
Court.

**8.** (1) The appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge.

(2) No Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) When trying an offence under this Act, the Designated Court may also try an offence, other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

## CHAPTER IV

### INFORMATION ON DEPOSIT TAKERS

Central  
database.

**9.** (1) The Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India.

(2) The authority designated under sub-section (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

Intimation of  
business by  
deposit taker.

**10.** (1) Every deposit taker which commences or carries on its business as such on or after the commencement of this Act shall intimate the authority referred to in sub-section (1) of section 9 about its business in such form and manner and within such time, as may be prescribed.

(2) The Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted pursuant to an Unregulated Deposit Scheme, direct any



deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker.

*Explanation.*—For the removal of doubts, it is hereby clarified that—

(a) the requirement of intimation under sub-section (1) is applicable to deposit takers accepting or soliciting deposits as defined in clause (4) of section 2; and

18 of 2013.

(b) the requirement of intimation under sub-section (1) applies to a company, if the company accepts the deposits under Chapter V of the Companies Act, 2013.

**11.** (1) The Competent Authority shall share all information received under section 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under section 9.

Information to be shared.

(2) The appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

(3) Where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

## CHAPTER V

### RESTITUTION TO DEPOSITORS

54 of 2002.  
31 of 2016.

**12.** Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Priority of depositors' claim.

54 of 2002.  
31 of 2016.

**13.** (1) Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Precedence of attachment.

(2) Where an order of provisional attachment has been passed by the Competent Authority—

(a) such attachment shall continue until an order is passed under sub-section (3) or sub-section (5) of section 15 by the Designated Court;

(b) all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

(3) The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.

(4) The Competent Authority shall not dispose of or alienate the property or money attached, except in accordance with the order of the Designated Court under sub-section (3) or sub-section (5) of section 15.

(5) Notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

Application  
for  
confirmation  
of attachment  
and sale of  
property.

**14.** (1) The Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

(2) In case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

Confirmation  
of attachment  
by Designated  
Court.

**15.** (1) Upon receipt of an application under section 14, the Designated Court shall issue notice to—

(a) the deposit taker; and

(b) any person whose property is attached under section 14,

to show cause, within a period of thirty days from the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold.

(2) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (1) to raise objections, if they so desire, to the attachment of the property.

(3) The Designated Court shall, after adopting such procedure as may be prescribed, pass an order—

(a) making the provisional order of attachment absolute; or

(b) varying it by releasing a portion of the property from attachment; or

(c) cancelling the provisional order of attachment,

and in case of an order under clause (a) or clause (b), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds.

(4) The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that—

(a) the deposit taker or the person referred to in sub-section (1) has interest in such property; and

(b) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.

(5) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

(6) The Designated Court shall endeavor to complete the proceedings under this section within a period of one hundred and eighty days from the date of receipt of the application referred to in sub-section (1).

Attachment  
of property of  
*malafide*  
transferees.

**16.** (1) Where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit

taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a *bonafide* transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

**17.** (1) Any deposit taker or a person referred to in sub-section (1) of section 15, or transferee referred to in section 16 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

Payment in  
lieu of  
attachment.

(2) While allowing the deposit taker or person or transferee referred to in sub-section (1) to make the deposit under sub-section (1), the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

**18.** (1) The Designated Court shall exercise the following powers, namely:—

Powers of  
Designated  
Court.

(a) power to approve the statement of dues of the deposit taker due from various debtors;

(b) power to assess the value of the assets of the deposit taker and finalise the list of the depositors and their respective dues;

(c) power to direct the Competent Authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account;

(d) power to approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the deposit taker;

(e) power to pass an order for full payment to the depositors by the Competent Authority or an order for proportionate payment to the depositors in the event, the money so realised is not sufficient to meet the entire deposit liability;

(f) power to direct any person, who has made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention; and

(g) power to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker and for repayment of the same to the depositors of such deposit taker or on any other matter or issue incidental thereto.

(2) On the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving such Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for—

(a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been initiated against him in the Designated Court under this Act; or

(b) safeguarding, so far as may be practicable, the interest of any business affected by the attachment.

*Explanation.*—For the purposes of this section, the expression “deposit taker” includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Act.

Appeal to  
High Court.

**19.** Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, within a period of sixty days from the date of such order:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

*Explanation.*—The expression “High Court” means the High Court of a State or Union territory where the Designated Court is situated.

Power of  
Supreme  
Court to  
transfer cases.

**20.** (1) Whenever it is made to appear to the Supreme Court that there is a default in any deposit scheme or deposit schemes of the nature referred to in section 30, the Supreme Court may, by an order, direct that any particular case be transferred from one Designated Court to another Designated Court.

(2) The Supreme Court may act under this section only on an application filed by the Competent Authority or any interested party, and every such application shall be supported by an affidavit.

(3) Where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.

## CHAPTER VI

### OFFENCES AND PUNISHMENTS

Punishment  
for  
contravention  
of section 3.

**21.** (1) Any deposit taker who solicits deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees.

(2) Any deposit taker who accepts deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than three lakh rupees but which may extend to ten lakh rupees.

(3) Any deposit taker who accepts deposits in contravention of section 3 and fraudulently defaults in repayment of such deposits or in rendering any specified service, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in the Unregulated Deposit Scheme.

*Explanation.*—For the purposes of this Act,—

(i) the expression “fraudulently” shall have the same meaning as assigned to it in section 25 of the Indian Penal Code;

(ii) where the terms of the Deposit Scheme are entirely impracticable or unviable, the terms shall be relevant facts showing an intention to defraud.

**22.** Any deposit taker who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both.

Punishment for contravention of section 4.

**23.** Any person who contravenes the provisions of section 5 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which may extend to ten lakh rupees.

Punishment for contravention of section 5.

**24.** Whoever having been previously convicted of an offence punishable under this Chapter, except the offence under section 26, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than ten lakh rupees but which may extend to fifty crore rupees.

Punishment for repeat offenders.

**25.** (1) Where an offence under this Act has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by deposit takers other than individuals.

(2) Nothing contained in sub-section (1) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a deposit taker other than an individual, and it is proved that the offence—

(a) has been committed with the consent or connivance; or

(b) is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker,

such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**26.** Whoever fails to give the intimation required under sub-section (1) of section 10 or fails to furnish any such statements, information or particulars as required under sub-section (2) of that section, shall be punishable with fine which may extend to five lakh rupees.

Punishment for contravention of section 10.

**27.** Notwithstanding anything contained in section 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator:

Cognizance of offences.

Provided that the provisions of section 4 and this section shall not apply in relation to a deposit taker which is a company.

## CHAPTER VII

### INVESTIGATION, SEARCH AND SEIZURE

2 of 1974.

**28.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under section 22 and section 26, shall be cognizable and non-bailable.

Offences to be cognizable and non-bailable.

**29.** The police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority.

Competent Authority to be informed of offences.

Investigation  
of offences by  
Central  
Bureau of  
Investigation.

**30.** (1) On receipt of information under section 29 or otherwise, if the Competent Authority has reason to believe that the offence relates to a deposit scheme or deposit schemes in which—

(a) the depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India; and

(b) the total value of the amount involved is of such magnitude as to significantly affect the public interest,

the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation.

(2) The reference made by the Competent Authority under sub-section (1) shall be deemed to be with the consent of the State Government under section 6 of the Delhi Special Police Establishment Act, 1946.

25 of 1946.

(3) On the receipt of the reference under sub-section (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under section 5 of the Delhi Special Police Establishment Act, 1946.

25 of 1946.

Power to  
enter, search  
and seize  
without  
warrant.

**31.** (1) Whenever any police officer, not below the rank of an officer-in-charge of a police station, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Act may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, such officer may, with the written authorisation of an officer not below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer subordinate to him,—

(a) to enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act;

(b) in case of resistance, to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (a);

(c) to seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit-taking scheme or arrangement in contravention of the provisions of this Act; and

(d) to detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that the said written authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, without the said written authorisation, enter and search such building, conveyance or place, at any time between sunset and sunrise after recording the grounds in writing.

(2) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to freeze such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act and it shall be binding on the concerned bank or financial or market establishment to comply with the said order:



Provided that no bank or financial or market establishment shall freeze such account, deposit or valuable securities, for a period beyond thirty days unless the same is authorised by the order of the Designated Court:

Provided further that, if at any time, it becomes practicable to seize the frozen property, the officer authorised under sub-section (1) may seize such property.

*Explanation.*—For the purposes of this section, the expressions,—

(i) “freezing of account” shall mean that no transaction, whether deposit or withdrawal shall be allowed in the said account; and

(ii) “freezing of property” shall mean that no transfer, conversion, disposition or movement of property shall be allowed.

(3) Where an officer takes down any information in writing or records grounds for his belief or makes an order in writing under sub-section (1) or sub-section (2), he shall, within a time of seventy-two hours send a copy thereof to the Designated Court in a sealed envelope and the owner or occupier of the building, conveyance or place shall, on application, be furnished, free of cost, with a copy of the same by the Designated Court.

2 of 1974. (4) All searches, seizures and arrests under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

**32.** (1) The Designated Court may take cognizance of offences under this Act without the accused being committed to it for trial.

2 of 1974. (2) Save as otherwise provided in section 31, the provisions of the Code of Criminal Procedure, 1973 shall apply—

(a) to all arrests, searches and seizures made under this Act;

(b) to the proceedings under this Act and for the purposes of the said provisions, the Designated Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Designated Court, shall be deemed to be Public Prosecutors.

Application of Code of Criminal Procedure, 1973 to proceedings before Designated Court.

## CHAPTER VIII

### MISCELLANEOUS

**33.** Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish a full and fair retraction, free of cost, in the same manner and in the same position in such newspaper or publication as may be prescribed.

Publication of advertisement of Unregulated Deposit Scheme.

**34.** Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

Act to have overriding effect.

**35.** The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

**36.** No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection of action taken in good faith.

**37.** (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (3) of section 7;
- (b) information to be shared under sub-section (2) of section 9;
- (c) the form and manner in which and the time within which the intimation shall be given under sub-section (1) of section 10;
- (d) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (1) of section 14;
- (e) the procedure to be adopted by the Designated Court before issuing an order under sub-section (3) of section 15;
- (f) rules under sub-section (1) of section 31;
- (g) the manner of publication of advertisement under section 33; and
- (h) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be made by rules.

Power of  
State  
Government,  
etc., to make  
rules.

**38.** (1) The State Government or Union territory Government, as the case may be, in consultation with the Central Government, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) ceiling for self-help groups under clause (j) of sub-section (4) of section 2;
- (b) purpose and ceiling under clause (k) of sub-section (4) of section 2;
- (c) the manner of provisional attachment of property by the Competent Authority under sub-section (3) of section 7;
- (d) other matters under clause (f) of sub-section (4) of section 7;
- (e) the rules relating to impounding and custody of records under sub-section (8) of section 7; and
- (f) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be made by rules.

Laying of  
rules.

**39.** (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made by a State Government or the Union territory Government, as the case may be, shall be laid, as soon as may be after it is made, before each House of the State Legislature or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to  
remove  
difficulties.

**40.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**41.** (1) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification, add to, or as the case may be, omit from the First Schedule, any scheme or arrangement, and on such addition, or omission, such scheme or arrangement shall become, or cease to be, a Regulated Deposit Scheme, as the case may be.

Power to  
amend First  
Schedule.

(2) A copy of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

**42.** The enactments specified in the Second Schedule shall be amended in the manner specified therein.

Amendment  
to certain  
enactments.

## THE FIRST SCHEDULE

[(See section 2 (15)]

## REGULATED DEPOSIT SCHEMES

(1) The Regulator and Regulated Deposit Scheme refers to the regulators and schemes and arrangements listed in the following Table, namely:—

TABLE

Sl. No.	Regulator	Regulated Deposit Scheme
(1)	(2)	(3)
1.	Securities and Exchange Board of India	<p>(i) Any scheme or an arrangement [as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (15 of 1992)] launched, sponsored or carried out by a Collective Investment Management Company registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999.</p> <p>(ii) Any scheme or an arrangement registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.</p> <p>(iii) Any scheme or an arrangement, pursuant to which funds are managed by a portfolio manager, registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993.</p> <p>(iv) Any scheme or an arrangement regulated under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under the Companies Act, 2013 (18 of 2013).</p> <p>(v) Any other scheme or an arrangement registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the regulations made thereunder.</p> <p>(vi) Any amount received as contributions in the nature of subscriptions to a mutual fund registered with Securities and Exchange Board of India under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.</p>
2.	Reserve Bank of India	<p>(i) Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with the Reserve Bank of India; or any other scheme or an arrangement registered under the Reserve Bank of India Act, 1934.</p>

(1)	(2)	(3)
		<p>(ii) Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks subject to the Guidelines and Circulars issued by the Reserve Bank of India from time to time.</p> <p>(iii) Any scheme or an arrangement under which funds are received by a system provider operating as an authorised payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007).</p> <p>(iv) Any other scheme or an arrangement regulated under the Reserve Bank of India Act, 1934 (2 of 1934), or the guidelines or circulars of the Reserve Bank of India.</p>
3.	The Insurance Regulatory and Development Authority of India	A contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938 (4 of 1938).
4.	State Government or Union territory Government	<p>(i) Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory.</p> <p>(ii) Any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982).</p> <p>(iii) Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory.</p> <p>(iv) Any scheme or an arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (43 of 1978).</p>
5.	National Housing Bank	Any scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987 (53 of 1987).
6.	Pension Fund Regulatory and Development Authority	Any scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
7.	Employees Provident Fund Organisation	Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952).
8.	Central Registrar, Multi-State Co-operative Societies	Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002).

(1)	(2)	(3)
9.	Ministry of Corporate Affairs, Government of India	(i) Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 (18 of 2013).  (ii) Any scheme or an arrangement under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 406 of the Companies Act, 2013 (18 of 2013).

(2) The following shall also be treated as Regulated Deposit Schemes under this Act, namely:—

(a) deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute; and

(b) any other scheme as may be notified by the Central Government under this Act.



## THE SECOND SCHEDULE

[(See section 42)]

## AMENDMENT TO CERTAIN ENACTMENTS

## PART I

## AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

In the Reserve Bank of India Act, 1934, in section 45-I, in clause (bb), after *Explanation II*, the following *Explanation* shall be inserted, namely:—

Amendment  
of section 45-I  
of Act 2 of  
1934.

"*Explanation III*.—The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society."

## PART II

## AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In the Securities and Exchange Board of India Act, 1992,—

Amendment  
of section 11  
of Act 15 of  
1992.

(i) in section 11, in sub-section (4), for clause (e), the following clause shall be substituted, namely:—

"(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.";

(ii) in section 28A, after *Explanation 3*, the following *Explanation* shall be inserted, namely:—

"*Explanation 4*.—The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person."

43 of 1961.

## PART III

## AMENDMENT TO THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

In the Multi-State Co-operative Societies Act, 2002, in section 67, in sub-section (1),—

Amendment  
of section 67  
of Act 39 of  
2002.

(a) after the words "receive deposits", the words "from its voting members" shall be inserted;

(b) the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the removal of doubts, it is hereby clarified that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members."

## STATEMENT OF OBJECTS AND REASONS

Non-banking entities are allowed to raise deposits from the public under the provisions of various statutes enacted by the Central Government and the State Governments. However, the regulatory framework for deposit taking activity in the country is not seamless. The regulators operate in well defined areas within the financial sector by regulating particular kinds of entities or activities. For instance, Non-Banking Financial Companies are under the regulatory and supervisory jurisdiction of the Reserve Bank of India. Similarly Chit Funds, Money Circulation including multi-level marketing schemes and schemes offered by co-operative societies are under the domain of the respective State Governments. In the same manner, the Collective Investment Schemes come under the purview of the Securities and Exchange Board of India. Despite such diverse regulatory framework, schemes and arrangements leading to unauthorised collection of money and deposits fraudulently, by inducing public to invest in uncertain schemes promising high returns or other benefits, are still operating in the society.

2. The Central legislations such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the Chit Funds Act, 1982 and the legislations enacted by the State Governments have not been able to completely address the issue of unregulated deposit schemes run by unscrupulous elements. This regulatory gap was highlighted in the twenty-first Report of the Parliamentary Related Standing Committee on Finance (Sixteenth Lok Sabha) titled as “Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc.”. The said Committee in its Report has recommended the requirement of “appropriate legislative provisions, coupled with effective administrative and enforcement measures in order to protect the hard-earned savings and investments made by millions of people”. Presently, there are considerable differences among State laws in protecting the interests of depositors, and many unregulated deposit taking schemes operate across State boundaries.

3. In view of the above, it becomes necessary to have a Central legislation to ensure a comprehensive ban on unregulated deposit taking activity and for its effective enforcement. The proposed Bill, namely, the Banning of Unregulated Deposit Schemes Bill, 2018, aims to prevent such unregulated deposit schemes or arrangements at their inception and at the same time makes soliciting, inviting or accepting deposits pursuant to an unregulated deposit scheme as a punishable offence. The Bill seeks to put in place a mechanism by which the depositors can be repaid without delay by attaching the assets of the defaulting establishments.

4. The Banning of Unregulated Deposit Schemes Bill, 2018, *inter alia*, provides for the following, namely:—

- (i) to make a provision for banning of unregulated deposit schemes;
- (ii) to impose an obligation on the deposit taker, pursuant to a regulated deposit scheme, not to commit any fraudulent default in the repayment or return of the deposit;
- (iii) to provide for deterrent punishment for promoting or operating an unregulated deposit taking scheme;
- (iv) to provide for punishment for fraudulent default in repayment to depositors;
- (v) designation of a Competent Authority by the State Government to ensure repayment of deposits in the event of default by a deposit taking establishment;
- (vi) to constitute the Designated Courts for such area or areas or such case or cases as per the provisions of the proposed Bill;

(vii) to empower the Central Government to designate an authority which shall create, maintain and operate an online data base for information on deposit takers operating in India; and

(viii) to confer powers and functions upon the Competent Authority including the power to attach assets of a defaulting establishment.

5. The Notes on Clauses explain in detail the provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 7th March, 2018.*

ARUN JAITLEY.

*Notes on Clauses*

*Clause 1.*—This clause relates to Short title, extent and commencement of the proposed legislation.

*Clause 2.* This clause contains the Definition of various expressions used in the proposed legislation.

*Clause 3.*—This clause relates to Banning of unregulated deposit schemes.

This clause provides that on and from the date of commencement of this Act, the Unregulated Deposit Schemes shall be banned and no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

*Clause 4.*—This clause relates to fraudulent default in regulated deposit schemes.

This clause provides that no deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

*Clause 5.*—This clause provides for the Wrongful inducement in relation to unregulated deposit schemes.

This clause provides that no person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

*Clause 6.*—This clause relates to Certain schemes to be Unregulated Deposit Schemes.

This clause provides that a prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme under this Act.

*Clause 7.*—This clause relates to the Competent Authority.

Sub-clause (1) of this clause provides that the appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

Sub-clause (2) of this clause provides that the appropriate Government may appoint other officers to assist the Competent Authority.

Sub-clause (3) of this clause provides that the Competent Authority has been empowered to provisionally attach the money or property of any deposit taker.

Sub-clauses (4), (5), (6), (7) and (8) of this clause provides for provisions to confer such powers on the Competent Authority and its officers as may be necessary to carry out the provisions of this Bill.

*Clause 8.*—This clause relates to the Designated Court.

Sub-clause (1) of this clause enables the appropriate Government, with concurrence of the Chief Justice of the respective High Court, to constitute one or more Designated Courts for trying offences under this Bill. The Designated Court must be presided by a Judge not below the rank of District and Sessions Judge or Additional District Sessions Judge.

Sub-clause (2) of this clause provides that no Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

Sub-clause (3) of this clause provides that when trying an offence under this Act, the Designated Court may also try an offence, other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

*Clause 9.*—This clause relates to Central database.

Sub-clause (1) of this clause provides that the Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India.

Sub-clause (2) of this clause provides that the authority designated under sub-section (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

*Clause 10.*—This clause relates to Intimation of business by deposit taker.

Sub-clause (1) of this clause provides that every deposit taker which commences or carries on its business as such on or after the commencement of this Act shall intimate the authority referred to in sub-clause (1) of clause 9 about its business in such form and manner and within such time, as may be prescribed.

Sub-clause (2) of this clause provides that the Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted pursuant to an Unregulated Deposit Scheme, direct any deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker.

*Clause 11.*—This clause relates to the Information to be shared.

Sub-clause (1) of this clause provides that the Competent Authority shall share all information received under clause 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under clause 9.

Sub-clause (2) of this clause provides that the appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

Sub-clause (3) of this clause provides that where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

*Clause 12.*—This clause relates to the Priority of depositors' claim.

This clause provides that save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

*Clause 13.*—This clause relates to Precedence of attachment.

Sub-clause (1) of this clause provides that save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Sub-clause (2) of this clause provides that where an order of provisional attachment has been passed by the Competent Authority and such attachment shall continue until an order is passed under sub-clause (3) or sub-clause (5) of clause 15 by the Designated Court and all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

Sub-clause (3) of this clause provides that the Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.

Sub-clause (4) of this clause provides that the Competent Authority shall not dispose of or alienate the property or money attached except in accordance with the order of the Designated Court under sub-clause (3) or sub-clause (5) of clause 15.

Sub-clause (5) of this clause provides that notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

*Clause 14.*—This clause relates to Application for confirmation of attachment and sale of property.

Sub-clause (1) of this clause provides that the Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

Sub-clause (2) of this clause provides that in case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

*Clause 15.*—This clause relates to Confirmation of attachment by Designated Court.

Sub-clause (1) of this clause provides that the Designated Court to issue notice to the deposit taker or any other person whose property is attached under clause 14 to show cause within 30 days as to why the attachment should not be made absolute.

Sub-clause (2) of this clause provides that this clause requires the Designated Court to issue notice to all other persons, in addition to the persons referred to in sub-clause (1), represented to it as having or likely to have a claim or interest in the title of the property.

Sub-clause (3) of this clause provides that the Designated Court after following the procedure prescribed can confirm, vary or cancel the attachment. Further, on confirming the attachment, the Designated Court can direct the Competent Authority to sell the property attached.

Sub-clause (4) of this clause provides that this provision prohibits the Designated Court from releasing from attachment any property unless it is satisfied that the deposit taker or any other person referred to in sub-clause (1) has interest in such property and there will remain under attachment an amount or property sufficient for repayment.

Sub-clause (5) of this clause provides that this clause requires the Designated Court to pass any order necessary for equitable distribution among the Depositors of the money attached or realised out of the sale.

Sub-clause (6) of this clause provides that this clause sets a timeline of 180 days, from the date of receipt of application under sub-clause (1), for completion of proceedings.



*Clause 16.*—This clause relates to Attachment of property of *malafide* transferees.

Sub-clause (1) of this clause provides that where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

Sub-clause (2) of this clause provides that where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a *bonafide* transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

*Clause 17.*—This clause relates to the Payment in lieu of attachment.

Sub-clause (1) of this clause provides that any deposit taker or a person referred to in sub-clause (1) of clause 15, or transferee referred to in clause 16 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

Sub-clause (2) of this clause provides that while allowing the deposit taker or person or transferee referred to in sub-clause (1) to make the deposit under the said sub-clause, the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

*Clause 18.*—This clause relates to the Powers of Designated Court.

Sub-clause (1) of this clause lays down all the steps that the Designated Court is empowered to take to ensure that the interest of Depositors is adequately protected.

Sub-clause (2) of this clause empowers the Designated Court to make orders for the provision of essential sums from the attached property to the deposit taker and to safeguard as far as practicable any business affected by such attachment.

*Clause 19.*—This clause relates to the Appeal to High Court.

This clause provides the time period within which an appeal may be filed against an order of the Designated Court. Any person, including the Competent Authority may appeal to the High Court against an order of the Designated Court, within 60 days of such order.

*Clause 20.*—This clause relates to the Power of Supreme Court to transfer cases.

Sub-clause (1) of this clause empowers the Supreme Court to direct that a particular case be transferred from one Designated Court to another in the event of default in any deposit scheme or deposit schemes of the nature referred to in clause 30.

Sub-clause (2) of this clause provides that the Supreme Court is empowered to act under sub-clause (1) only on the basis of an application filed by the Competent Authority or an interested party.

Sub-clause (3) of this clause provides that where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.

*Clause 21.*—This clause relates to the Punishment for contravention of clause 3.

Sub-clause (1) of this clause provides that for soliciting Deposits in contravention of clause 3, a deposit taker is punishable with imprisonment for a minimum term of one year

which may extend to five years, and with fine which shall not be less than two lakh rupees and may extend to ten lakh rupees.

Sub-clause (2) of this clause provides that for accepting Deposits in contravention of clause 3, a deposit taker is punishable with imprisonment for a minimum term of two years which may extend to seven years, and with fine which shall not be less than three lakh rupees and may extend to ten lakh rupees.

Sub-clause (3) of this clause provides that for accepting Deposits in contravention of clause 3 and committing fraudulent default in repayment, a deposit taker is punishable with imprisonment for a minimum term of three years which may extend to ten years and a fine which shall not be less than five lakh rupees which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in such schemes or arrangements.

*Clause 22.*—This clause relates to the Punishment for contravention of clause 4.

The punishment prescribed for contravention of clause 4 is imprisonment which may extend to seven years or a fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such fraudulent default, whichever is higher, or with both.

*Clause 23.*—This clause relates to the Punishment for contravention of clause 5.

The punishment prescribed for contravention of clause 10 is imprisonment for a minimum term of one year which may extend to five years and with fine which may extend to ten lakh rupees.

*Clause 24.*—This clause relates to the Punishment for repeat offenders.

This clause provides for a higher and more stringent punishment for repeat offenders who commit an offence after having previously been convicted for an offence under this legislation, except for an offence under clause 26. A repeat offender, under this clause, shall be punishable with imprisonment for a minimum term of five years which may extend to ten years and a fine which shall not be less than ten lakh rupees and which may extend to fifty crore rupees.

*Clause 25.*—This clause relates to Offences by deposit takers other than individuals.

Sub-clause (1) of this clause provides for imposition of liability in case an offence under the Act has been committed by an entity other than an individual. This sub-clause imposes liability on every person who is “in charge of, and was responsible to, the deposit taker for the conduct of the business of the company”.

Sub-clause (2) of this clause provides that nothing contained in sub-clause (1) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Sub-clause (3) of this clause provides for holding liable any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker when it is proved that an offence has been committed with the consent or connivance of, or is attributable to an any neglect on the part of such person.

*Clause 26.*—This clause relates to Punishment for contravention of clause 10.

This clause provides that whoever fails to give the intimation required under sub-clause (1) of clause 10 or fails to furnish any such statements, information or particulars as required under sub-clause (2) of that clause, shall be punishable with fine which may extend to five lakh rupees.

*Clause 27.*—This clause relates to Cognizance of offences.

This clause provides that notwithstanding anything contained in clause 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator, provided that the provisions of clause 4 and this section shall not apply in relation to a deposit taker which is a company.

*Clause 28.*—This clause relates to Offences to be cognizable and non-bailable.

This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under clause 22 and clause 26, shall be cognizable and non-bailable.

*Clause 29.*—This clause relates to Competent Authority to be informed of offences.

This clause provides that the police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority.

*Clause 30.*—This clause relates to Investigation of offences by Central Bureau of Investigation.

Sub-clause (1) of this clause provides that the Competent Authority has the power to refer a case for investigation by the Central Bureau of Investigation if the two conditions prescribed in sub-clauses (a) and (b) are met.

Sub-clause (2) of this clause provides that the reference under sub-clause (1) is deemed to be with the consent of the State Government under clause 6 of the Delhi Special Police Establishment Act, 1946.

Sub-clause (3) of this clause provides that on the receipt of the reference under sub-clause (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under clause 5 of the Delhi Special Police Establishment Act, 1946.

*Clause 31.*—This clause relates to Power to enter, search and seize without warrant.

Sub-clause (1) of this clause empowers a police officer, not below the rank of an officer-in-charge of a police station, and with the written authorisation of an officer not below the rank of Superintendent of Police, to enter and search any building, conveyance or place, in accordance with the procedure mentioned in the said sub-clause.

Sub-clause (2) of this clause provides for freezing such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act.

Sub-clause (3) of this clause provides for situations where an officer takes down any information or makes any order in writing under any of the preceding sub-clauses. The officer is mandated to send a copy of the information taken down or the order made to the Designated Court within seventy-two hours in a sealed envelope. The owner or occupier of the place shall be furnished a copy of such information or order, free of cost, upon an application made by them in this regard.

Sub-clause (4) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to any search, seizure or arrest made under this section.

*Clause 32.*—This clause relates to Application of the Code of Criminal Procedure, 1973 to proceedings before Designated Court.

Sub-clause (1) of this clause provides that the Designated Court may take cognizance of offences under this Act even without the accused being committed for trial. The intended effect of this sub-clause is to ensure speedy and expeditious disposal of cases under the Act.

Sub-clause (2) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to all arrests, searches and seizures and to all the proceedings under this Bill, and that the Designated Court shall be deemed to be a Court of Session and a person conducting prosecution before such Court would be a Public Prosecutor.

*Clause 33.*—This clause relates to Publication of advertisement of Unregulated Deposit Scheme.

This clause provides that any newspaper or publication containing material or advertisement relating to an Unregulated Deposit Scheme may be directed by the State Government to publish a full and fair retraction of the material or advertisement free of cost. It also provides that the retraction should be published in the same manner and in the same position as the alleged material or advertisement on Unregulated Deposit Scheme.

*Clause 34.*—This clause relates to this Act to have overriding effect.

This clause provides that save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

*Clause 35.*—This clause relates to Application of other laws not barred.

This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

*Clause 36.*—This clause relates to Protection of action taken in good faith.

This clause provides that no suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

*Clause 37.*—This clause relates to Power of Central Government to make rules.

This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation.

*Clause 38.*—This clause relates to Power of State Government, etc. to make rules.

This clause empowers the respective State Governments to make rules for carrying out the provisions of the proposed legislation.

*Clause 39.*—This clause relates to Laying of rules.

This clause provides for laying of the rules by the Central Government and State Governments in the respective legislature.

*Clause 40.*—This clause relates to Power to remove difficulties.

This clause empowers the Central Government to make such provisions and issue clarifications as may be required for the proper and effective functioning of the Bill. This is a time-bound provision and the Central Government cannot take such measures for removal of difficulties after the expiry of three years from the commencement of this Bill.

*Clause 41.*—This clause relates to Power to amend First Schedule.

This clause allows the Central Government to add or omit from First Schedule any scheme or arrangement by notification.

*Clause 42.*—This clause relates to Amendment to certain enactments.

This clause provides that the enactments listed in the Second Schedule will stand amended in the manner prescribed in the Schedule.

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### FINANCIAL MEMORANDUM

The Bill has no financial implications and does not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 37 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Act. The matters in respect of which the rules may be made, *inter alia*, include (a) the information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (3) of section 7; (b) information to be shared under sub-section (2) of section 9; (c) the form and manner in which and the time within which the intimation shall be given under sub-section (1) of section 10; (d) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (1) of section 14; (e) the procedure to be adopted by the Designated Court before issuing an order under sub-section (3) of section 15; and (f) the manner of publication of advertisement under section 33.

Clause 38 of the Bill empowers the State Government to make rules, in consultation with the Central Government, for carrying out the provisions of the Act. The matters in respect of which the rules may be made, *inter alia*, include (a) the ceiling for self-help groups under clause (j) of sub-section (4) of section 2; (b) ceiling and purpose of collection of other amounts which will not be classified as deposits for the purposes of this legislation, under clause (k) of sub-section (4) of section 2; (c) the manner of provisional attachment of property by the Competent Authority under sub-section (3) of section 7; (d) powers of the Competent Authority under clause (f) of sub-section (4) of section 7; and (e) rules relating to impounding and custody of records under sub-section (8) of section 7.

Clause 41 empowers the Central Government to add or omit schemes or arrangement to or from the list of Regulated Deposit Schemes specified in the First Schedule of the proposed legislation.

The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

## BILL NO.59 OF 2018

*A Bill to amend the Airports Economic Regulatory Authority of India Act, 2008.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

Short title and  
commencement.

**1.** (1) This Act may be called the Airports Economic Regulatory Authority of India (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment  
of section 2.

**2.** In section 2 of the Airports Economic Regulatory Authority of India Act, 2008 (hereinafter referred to as the principal Act), in clause (i), for the words “one and a half million”, the words “three and a half million” shall be substituted.

27 of 2008.

Amendment  
of section 13.

**3.** In section 13 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-sections (1) and (2), the Authority shall not determine the tariff or tariff structures or the amount of development fees in respect of an airport or part thereof, if such tariff or tariff structures or the amount of development fees has been incorporated in the bidding document, which is the basis for award of operatorship of that airport:

Provided that the Authority shall be consulted in advance regarding the tariff, tariff structures or the amount of development fees which is proposed to be incorporated in the said bidding document and such tariff, tariff structures or the amount of development fees shall be notified in the Official Gazette.”.



## STATEMENT OF OBJECTS AND REASONS

The Airports Economic Regulatory Authority of India Act, 2008 (the Act) was enacted to provide for the establishment of an Airports Economic Regulatory Authority (the Authority) to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals. The Authority is an independent economic regulator for protection of interests of airports, airlines and passengers.

2. Over the last few years, India has emerged as the third largest domestic aviation market in the world and the number of major airports has increased from 12 to 27 during the period 2007-2017. Exponential growth of the Sector has added tremendous pressure to the Authority. Further, various private operators are entering the Sector as part of Public-Private Partnership which requires regulatory certainty keeping in view the long gestation of the Sector. To overcome this complexity, it is felt that if too many airports come under the purview of the Authority, it will be difficult on the part of the Authority to efficiently determine the tariffs and monitor the service standards of major airports with the limited resources available with the Authority.

3. For engaging private partners in the infrastructure projects, several models are followed such as predetermined tariff or tariff based bidding and the airport project is awarded to the concessionaire who offers the lowest tariff or accepts predetermined tariff indexed to inflation throughout the concession period. In this model, the market itself determines the charges and the regulator is not required to fix charges after the award of the project. The Act, in present form, does not cover airports to be operated under such model. Since this model is a means to reduce the airport charges, the airports in future may also be developed under this model.

4. In view of the above, it is proposed to amend the Airports Economic Regulatory Authority of India Act, 2008 through the Airports Economic Regulatory Authority of India (Amendment) Bill, 2018 which proposes to—

(a) amend the definition of “major airport” as any airport which has, or is designated to have, annual passengers throughput in excess of three and a half million instead of existing one and a half million; and

(b) amend section 13 of the Act so as to capture the tariff models which are part of bidding process in the Act.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

SURESH PRABHU

## FINANCIAL MEMORANDUM

The Bill has no financial implications and does not involve any other expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

## BILL NO.100 OF 2018

*A Bill further to amend the Arbitration and Conciliation Act, 1996.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2018.

Short title and  
commencement.

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

26 of 1996.

**2.** In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 2,—

Amendment  
of section 2.

(i) in sub-section (1),—

(A) after clause (c), the following clause shall be inserted, namely:—

'(ca) "arbitral institution" means an arbitral institution designated by the Supreme Court or a High Court under this Act;'

(B) after clause (h), the following clauses shall be inserted, namely:—

'(i) "prescribed" means prescribed by rules made under this Act;

(j) "regulations" means the regulations made by the Council under this Act.;

(ii) in sub-section (2), in the proviso, for the word, brackets and letter "clause (a)", the word, brackets and letter "clause (b)" shall be substituted.

Amendment  
of section 11.

**3. In section 11 of the principal Act,—**

(i) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43F, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institutions are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee as prescribed under the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.";

(ii) in sub-section (4), in the long line, for the portion beginning with "the appointment shall be made" and ending with "designated by such Court", the following shall be substituted, namely:—

"the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be";

(iii) in sub-section (5), for the portion beginning with "the appointment shall be made" and ending with "designated by such Court", the following shall be substituted, namely:—

"the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4)";

(iv) in sub-section (6), in the long line, for the portion beginning with "party may request" and ending with "designated by such Court", the following shall be substituted, namely:—

"the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be";

(v) sub-sections (6A) and (7) shall be omitted;

(vi) in sub-section (8), for the words "The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court", the words, brackets and figures "The arbitral institution referred to in sub-sections (4), (5) and (6)" shall be substituted;

(vii) in sub-section (9), for the words "the Supreme Court or the person or institution designated by that Court", the words "the arbitral institution designated by the Supreme Court" shall be substituted;

(viii) sub-section (10) shall be omitted;

(ix) for sub-sections (11) to (14), the following sub-sections shall be substituted, namely:—

“(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral

institution to which the request has been first made under the relevant sub-section shall be competent to appoint.

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-section shall be construed as a reference to the arbitral institution designated under sub-section (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(14) The arbitral institutions shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

*Explanation.*—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.”.

4. In section 17 of the principal Act, in sub-section (1), the words and figures "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" shall be omitted. Amendment of section 17.

5. In section 23 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:— Amendment of section 23.

"(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment."

6. In section 29A of the principal Act,— Amendment of section 29A.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The award in matters other than international commercial arbitration shall be made within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.";

(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely:—

"Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced."

7. In section 34 of the principal Act, in sub-section (2), in clause (a), for the words "furnishes proof that", the words "establishes on the basis of the record of the arbitral tribunal that" shall be substituted. Amendment of section 34.

8. In section 37 of the principal Act, in sub-section (1), for the words "An appeal", the words "Notwithstanding anything contained in any other law for the time being in force, an appeal" shall be substituted. Amendment of section 37.

9. After section 42 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 42A and 42B.

"42A. Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall keep confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award. Confidentiality of information.

Protection of action taken in good faith.

42B. No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder."

Insertion of new Part.

10. After Part I of the principal Act, the following Part shall be inserted, namely:—

## 'PART IA

### ARBITRATION COUNCIL OF INDIA

Definitions.

43A. In this Part, unless the context otherwise requires,—

(a) "Chairperson" means the Chairperson of the Arbitration Council of India appointed under clause (a) of sub-section (1) of section 43C;

(b) "Council" means the Arbitration Council of India established under section 43B;

(c) "Member" means a Member of the Council and includes the Chairperson.

Establishment and incorporation of Arbitration Council of India.

43B. (1) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(3) The head office of the Council shall be at Delhi.

(4) The Council may, with the prior approval of the Central Government, establish offices at other places in India.

Composition of Council.

43C. (1) The Council shall consist of the following Members, namely:—

(a) a person, who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India—Chairperson;

(b) an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government—Member;

(c) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government in consultation with the Chairperson—Member;

(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, *ex officio*;

(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary— Member, *ex officio*;

(f) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government—Part-time Member; and

(g) Chief Executive Officer—Member-Secretary, *ex officio*.

(2) The Chairperson and Members of the Council, other than *ex officio* Members, shall hold office as such, for a term of three years from the date on which they enter upon their office:



Provided that no Chairperson or Member, other than *ex officio* Members, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

(3) The salary, allowances and other terms and conditions of the Chairperson and Members of the Council referred to in clauses (b) and (c) of sub-section (1) shall be such as may be prescribed by the Central Government.

(4) The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed by the Central Government.

43D. (1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation, and maintenance of uniform professional standards in respect of all matters relating to arbitration.

Duties and  
functions of  
Council.

(2) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

- (a) frame policies governing the grading of arbitral institutions;
- (b) recognise professional institutes providing accreditation of arbitrators;
- (c) review the grading of arbitral institutions and arbitrators;
- (d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) set up, review and update norms and ensure satisfactory level of arbitration and conciliation;
- (f) act as a forum for exchange of reviews and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;
- (g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) promote institutional arbitration by strengthening arbitral institutions;
- (i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;
- (j) establish and maintain depository of arbitral awards made both in India and overseas;
- (k) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and
- (l) such other functions as may be decided by the Central Government.

43E. The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.

Appointment  
of experts and  
constitution of  
Committees  
thereof.

43F. The Council shall make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations.

General norms  
for grading of  
arbitral  
institutions.

43G. The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:

Norms for  
accreditation.

Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly.

Depository of awards.

43H. The Council shall maintain an electronic depository of all arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations.

Power to make regulations by Council.

43-I. The Council may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under this Act.

Chief Executive Officer.

43J. (1) There shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council.

(2) The qualifications, appointment and other terms and conditions of services of the Chief Executive Officer shall be such as may be prescribed by the Central Government.

(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.

(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.

(5) The qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be prescribed by the Central Government.'

Amendment of section 45.

11. In section 45 of the principal Act, for the words "unless it finds", the words "unless it *prima facie* finds", shall be substituted.

Amendment of section 50.

12. In section 50 of the principal Act, in sub-section (1), for the words "An appeal", the words "Notwithstanding anything contained in any other law for the time being in force, an appeal" shall be substituted.

Insertion of new section 87.

13. After section 86 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 23rd October, 2015, namely:—

Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.

"87. Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall—

3 of 2016.

(a) not apply to—

(i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;

3 of 2016.

(ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;

3 of 2016.

(b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings."

3 of 2016.

Insertion of new Schedule.

14. After the Seventh Schedule to the principal Act, the following Schedule shall be inserted, namely:—

"EIGHTH SCHEDULE

(See section 43G)

*Qualifications and Experience of Arbitrator*

A person shall not be qualified to be an arbitrator unless he—

- (i) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate; or
- (ii) is a chartered accountant within the meaning of the Chartered Accountant Act, 1949 having ten years of practice experience as a chartered accountant; or
- (iii) has been an officer of the Indian Legal Service; or
- (iv) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or
- (v) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking, or at a senior level managerial position in private sector or self-employed; or
- (vi) has been an officer having senior level experience of administration in the Central or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute;
- (vii) is a person, in any other case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, information technology, Intellectual Property Rights or other specialised areas in the Government, Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector, as the case may be.

*General norms applicable to Arbitrator*

- (i) The arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;
- (ii) The arbitrator must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties;
- (iii) The arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;
- (iv) The arbitrator should not have been convicted of an offence involving moral turpitude or economic offence;
- (v) The arbitrator shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labour laws, law of torts, making and enforcing the arbitral awards;
- (vi) The arbitrator should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto;
- (vii) The arbitrator should be able to understand key elements of contractual obligations in civil and commercial disputes and be able to apply legal principles to a situation under dispute and also to apply judicial decisions on a given matter relating to arbitration; and
- (viii) The arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication."

Amendment  
to Act 3 of  
2016.

**15.** Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 shall be omitted and shall be deemed to have been omitted with effect from the 23rd October, 2015. .

## STATEMENT OF OBJECTS AND REASONS

The Arbitration and Conciliation Act, 1996 (the Act) was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith or incidental thereto. The said Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015 to make arbitration process cost effective, speedy, with minimum court intervention and to ensure centrality of arbitrators.

2. The promotion of the institutional arbitration in India by strengthening Indian arbitral institutions has been identified critical to the dispute resolution through arbitration. Though arbitral institutions have been working in India, they have not been preferred by parties, who have leaned in favour of *ad hoc* arbitration or arbitral institutions located abroad. Therefore, in order to identify the roadblocks to the development of institutional arbitration, examine specific issues affecting the Indian arbitration landscape, and also to prepare a road map for making India a robust centre for institutional arbitration both domestic and international, the Central Government constituted a High Level Committee under the Chairmanship of Justice B. N. Srikrishna, Former Judge of Supreme Court of India.

3. The terms of reference of the Committee, *inter alia*, include,—

(a) to examine the effectiveness of existing arbitration mechanism by studying the functioning and performance of arbitral institutions in India;

(b) to devise a road map to promote institutional arbitration mechanisms in India; and

(c) to evolve an effective and efficient arbitration eco-system for commercial dispute resolution and suggest reforms in the Arbitration and Conciliation Act, 1996.

4. The High Level Committee submitted its Report on 30th July, 2017. With a view to strengthen institutional arbitration in the country, the said Committee, *inter alia*, recommended for the establishment of an independent body for grading of arbitral institutions and accreditation of arbitrators, etc. The Committee has also recommended certain amendments to the said Act to minimise the need to approach the Courts for appointment of arbitrators. After examination of the said recommendations, with a view to make India a hub of institutional arbitration for both domestic and international arbitration, it has been decided to amend the Arbitration and Conciliation Act, 1996.

5. The salient features of the Arbitration and Conciliation (Amendment) Bill, 2018, *inter alia*, are as follows:—

(i) to amend section 11 of the Act relating to "Appointment of Arbitrators" so as to change the present system of appointment of arbitrators by the Supreme Court or High Court, to a system where the arbitrators shall be appointed by the "arbitral institutions" designated by the Supreme Court or High Court;

(ii) in case where no graded arbitral institutions are available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions;

(iii) to insert a new Part 1A to the Act for the establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of grading of arbitral institutions and accreditation of arbitrators, etc.;

(iv) to amend section 23 of the Act relating to "Statement of claim and defence" so as to provide that the statement of claim and defence shall be completed within a period of six months from the date the arbitrator receives the notice of appointment;

(v) to provide that the arbitrator, arbitral institutions and the parties shall maintain confidentiality of information relating to arbitral proceedings and also protect the arbitrator or arbitrators from any suit or other legal proceedings for any action or omission done in good faith in the course of arbitration proceedings; and

(vi) to clarify that section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, is applicable only to the arbitral proceedings which commenced on or after 23rd October, 2015 and to such court proceedings which emanate from such arbitral proceedings, to address the divergent views given by various Courts.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 17th March, 2018.*

RAVI SHANKAR PRASAD.



## FINANCIAL MEMORANDUM

Clause 11 of the Bill proposes to insert new sections 43A to 43J in the Arbitration and Conciliation Act, 1996.

2. Proposed sub-section (1) of section 43B provides for the establishment of the Arbitration Council of India. Sub-section (2) provides that the Arbitration Council of India shall acquire, hold and dispose of property, both movable and immovable and sub-section (3) of the said section provides that the head office of the Council shall be at Delhi. Sub-section (4) provides that the Council may, with the prior approval of the Central Government, establish offices at other places in India.

3. Sub-section (3) of proposed section 43C provides that the salary, allowances and other terms and conditions of the Chairperson and Members of the Council shall be prescribed by the Central Government and sub-section (4) provides for entitlement of travelling and other allowances of the Part-time Member, to be prescribed by the Central Government.

4. Sub-section (2) of proposed section 43J provides for the qualifications, appointment and other terms and conditions of services of the Chief Executive Officer shall be prescribed by the Central Government. Sub-section (4) of the said section also provides that the Council shall have a Secretariat consisting of such number of officers and employees as may be prescribed by the Central Government. Sub-section (5) of the said section provides that the qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be prescribed by the Central Government.

5. The financial implication arising from the establishment of the Arbitration Council of India, etc., is estimated at as recurring expenditure of Rs. 17.51 crore per annum and non-recurring expenditure is about Rs. 1.93 crore.

6. It would be difficult to indicate the exact expenditure incurred in the appointment of officers of the Arbitration Council of India, etc. The Bill does not envisage any other expenditure of recurring or non-recurring nature.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill proposes to insert new sections 43A to 43J in the Arbitration and Conciliation Act, 1996.

2. Proposed sub-section (1) of section 43B provides for the establishment of Arbitration Council of India.

3. Proposed sub-sections (3) and (4) of section 43C, *inter alia*, provides for—

(a) the terms and conditions of, the service and the salary and allowances payable to, the Chairperson and Members as may be prescribed by the Central Government;

(b) the travelling and other allowances entitled to the Part-time Member as may be prescribed of the Central Government.

4. Proposed section 43-I provides that the Arbitration Council of India, in consultation with the Central Government, may make regulations consistent with the provisions of the Act and the rules made thereunder.

5. Proposed sub-section (2) of section 43J provides that the qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be prescribed by the Central Government. Sub-section (4) of the said section provides that the number of officers and employees of the Secretariat to the Council shall be such as may be prescribed by the Central Government.

6. The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

SNEHLATA SHRIVASTAVA  
*Secretary General*